CLERK'S COPY.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

October Term, 1938

No. 118

THE UNITED STATES OF AMERICA, PETITIONER

vs.

KATHLEEN McCLURE, AS ADMINISTRATRIX OF THE ESTATE OF JOHN F. McCLURE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 24, 1938
CERTIORARI GRANTED OCTOBER 10, 1938

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 154

THE UNITED STATES OF AMERICA, PETITIONER

vs.

KATHLEEN McCLURE, AS ADMINISTRATRIX OF THE ESTATE OF JOHN F. McCLURE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

INDEX

	Page
Record from D. C. U. S., Eastern District of Washington	1
Names and addresses of counsel	1
Amended complaint	2
Answer to amended complaint	7
Plaintiff's proposed findings of fact and conclusions of law	9
Defendant's proposed findings of fact and conclusions of law	13
Order settling findings of fact and conclusions of law	17
Judgment	19
Stipulation and order extending time	20
Bill of exceptions	22
Caption	22
Plaintiff's proposed findings of fact and conclusions of law	23
Defendant's proposed findings of fact and conclusions of law	28
Findings of fact and conclusions of law	28
Order extending time	32
Order settling bill of exceptions	33
Notice of appeal	35
Petition for appeal	36
Assignments of error	37
Order allowing appeal	40
Citation and service	41
Bond on appeal	42
Praecipe for transcript of record	44
Clerk's certificate	45
Citation and service	47

	Page
Proceedings in U. S. C. C. A., Ninth Circuit	40
Order of submission	40
Order directing filing of opinion and judgment	40
Opinion, Wilbur, J.	40
Judgment	59
Clerk's certificate	60
Order allowing certiorari	61

NAMES AND ADDRESSES OF ATTORNEYS OF RECORD.

ALAN G. PAINE,
Exchange Bldg. Spokane, Washington,

GRAHAM K. BETTS,
1402 Smith Tower, Seattle Washington.
Attorneys for Appellant

GEORGE R. STUNTZ,
Attorney Department of Justice, 303 Post-office Bldg., Seattle, Washington

JAMES M. SIMPSON,
United States Attorney, Post Office Bldg., Spokane, Washington.

S. R. CLEGG, Assistant United States Attorney, Post Office Bldg., Spokane, Washington.

Attorneys for Appellee

[Endorsed]: Filed in the U. S. District Court, Eastern Dist. of Washington, Sep. 16, 1936. A. A. La Framboise, Clerk. Eva M. Hardin, Deputy.

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. L-4803

KATHLEEN McCLURE, as administratrix of the estate of John F. McClure, deceased, and and KATHLEEN McCLURE individually,
Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant.

AMENDED COMPLAINT.

Comes now the plaintiff and for cause of action alleges:

1. That the plaintiff above named is the duly appointed, acting and qualified administratrix of the estate of John F. McClure, deceased, and is a resident of Spokane, Spokane County, Washington, and said plaintiff is the widow of the deceased.

2. That the deceased enlisted for service in the United States Army on the 14th day of December, 1917, and was honorably discharged therefrom on a surgeon's certificate of disability on January 29,

1919, due to rheumatic heart, from which illness he died on July 28, 1936.

3. That shortly after his enlistment, the decedent applied for a policy of war risk term insurance in the sum of $10,000, which policy of insurance was thereafter granted to the decedent, and provided indemnity for death or total permanent disability occurring while said policy was in full force and effect, said disability indemnity being the amount of $57.50 per month.

4. That during the decedent's service the premiums for said [1*] insurance were deducted from his monthly service pay, and said policy was continued in full force by the payment of premiums for some period thereafter; and that long after the cessation of the payment of premiums the decedent, on the 15th day of April, 1929, filed a claim for compensation, which claim was thereafter granted, and the rating made upon such claim was retroactive to the date of discharge, and the compensation payable thereunder was sufficient at all times to pay the premiums on said policy of insurance; and that such compensation remained and still remains uncollected; by reason whereof said policy of insurance did not lapse, but was continued in full force and effect until December 17, 1929, when the decedent was rated as totally and permanently disabled, or until the termination of war risk term insurance as provided in the Act of July 2, 1926, or, to-wit: until the 2nd day of July, 1927.

5. That while the decedent was in the United States military service he contracted a disease

*Page numbering appearing at the foot of page of original certified Transcript of Record.

known as "rheumatic heart", from which there developed a valvular heart disease, aortic stenosis, with failing compensation, by reason of which diseases this plaintiff alleges and believes that the decedent was totally and permanently disabled within the terms of said policy of insurance on the day of his discharge, to-wit: January 29, 1919.

6. That if the decedent was not totally and permanently disabled on January 29, 1919, then his said policy of war risk insurance remained in full force and effect up to and including the 17th day of December, 1929, unless said policy of war risk term insurance ceased to exist under the Act of July 2, 1926, on the 2nd day of July, 1927, in which latter event said policy of insurance was in full force and effect on said latter date. That if said decedent was not totally and permanently disabled on the 29th day of January, 1919, he was so disabled at some subsequent date while said policy of insurance was [2] still in full force and effect, and entitled to the benefits of said policy as provided by law, from the date of commencement of said total and permanent disability.

7. That by reason of the occurrence of total and permanent disability as aforesaid, the defendant became indebted to the deceased and the deceased became entitled to receive from the defendant the sum of $57.50 per month, commencing on the date of the occurrence of total and permanent disability and continuing to July 28, 1936, the date of his death, and thereafter the plaintiff, in her individual capacity became entitled to receive from the

defendant and the defendant became indebted to her in her individual capacity in the sum of $57.50 per month, commencing on the date of death of the decedent.

8. That under the terms and provisions of Section 305 of the World War Veterans' Act, as amended, 38 USCA 516, if recovery be had under said section, the plaintiff, in her individual capacity, as widow of the decedent, is entitled to receive all future payments to become due and payable until 240 payments have been made, and in the event of her death prior to the payment of all of said 240 installments, then the children of the decedent, namely, Edward McClure and Margaret McClure, will be entitled to receive said payments, said persons being the natural children of the decedent surviving him.

9. That on the 11th day of June, 1931, the decedent made claim to the defendant and to the Director of the United States Veterans Administration for payment of said insurance benefits, but that the said Director, by and through his duly appointed and authorized agents, the Insurance Claims Council, denied the decedent's said benefits, on the 17th day of April, 1935, notice of which denial was received by the decedent on the 12th day of May, 1935; and a disagreement, as contemplated by Section 19 of the World War Veterans Act as amended, now exists.

Wherefore, Plaintiff prays judgment in her representative capacity for the accrued sum at the rate of $57.50 per month, commencing on the date

of the occurrence of total and permanent disability to July 28, 1936, the date of death of the decedent, and the plaintiff further prays judgment in her individual capacity for the accrued sum due and owing at the rate of $57.50 per month, commencing July 28, 1936, and continuing the date of judgment herein.

GRAHAM K. BETTS
POST, RUSSELL, DAVIS & PAINE
Attorneys for Plaintiff.

State of Washington
County of Spokane—ss.

Kathleen McClure, being first duly sworn, on oath deposes and says: That she is the plaintiff in the above entitled action and makes this verification in support of the foregoing Amended Complaint; that she has read said Amended Complaint, knows the contents thereof and believes the same to be true.

KATHLEEN McCLURE

Subscribed and sworn to before me this 26th day of August, 1936.

[Seal] WARREN W. RUSSELL
Notary Public for the State of Washington, residing at Spokane.

[Endorsed]: Filed in the U. S. District Court Eastern Dist. of Washington, Sep. 16, 1936. A. A. La Framboise, Clerk. Eva M. Hardin, Deputy.

[Title of Court and Cause.]

ANSWER TO AMENDED COMPLAINT

Comes now the defendant above named and for Answer to the Amended Complaint of plaintiff herein admits, denies and alleges as follows:

I.

For answer to paragraph 1, defendant admits the same.

II.

For answer to paragraph 2, defendant admits the same down to and including the word "heart," and denies each and every other allegation therein contained except that said veteran died on July 28, 1936.

III.

Defendant denies paragraph 3.

IV.

Defendant denies paragraph 4.

V.

Defendant denies paragraph 5.

VI.

Defendant denies paagraph 6.

VII.

Defendant denies paragraph 7.

VIII.

Defendant denies paragraph 8.

IX.

Defendant denies paragraph 9.

Wherefore, defendant, having fully answered the Amended Complaint of the plaintiff, prays that the same be dismissed with costs and disbursements herein to be taxed.

J. M. SIMPSON
United States Attorney
WILL G. BEARDSLEE
Special Assistant to the Attorney General
GEORGE R. STUNTZ
Attorney, Department of Justice

United States of America
Eastern District of Washington
Northern Division—ss.

J. M. Simpson, being first duly sworn, on oath deposes and says:

That he is the duly appointed, qualified and acting United States Attorney for the Eastern District of Washington, and makes this verification as such; that he has read the above and foregoing Answer to Amended Complaint, knows the contents thereof, and that the same is true as he verily believes.

[Seal] J. M. SIMPSON

Subscribed and sworn to before me this 16th day of September, 1936.

A. A. LaFRAMBOISE
United States Clerk for the Eastern
District of Washington.
By EVA M. HARDIN, Deputy [6]

[Endorsed]: Filed in the U. S. District Court, Eastern Dist. of Washington, Feb. 20, 1937. A. A. LaFramboise, Clerk. Eva M. Hardin, Deputy.

[Title of Court and Cause.]

PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This cause having come duly and regularly on for trial before the Honorable J. Stanley Webster, Judge of the above entitled court, sitting without a jury, on the 17th day of September, 1936, the plaintiff appearing in person and by her attorneys Graham K. Betts and Alan G. Paine, the defendant appearing by its attorneys J. M. Simpson, United States Attorney, Will G. Beardslee, Special Assistant to the Attorney General, and George R. Stuntz, Attorney, Department of Justice, evidence having been adduced by both parties and arguments having been made in support thereof, the Court did thereupon take said cause under advisement and thereafter briefs were submitted by said parties, and the

Court having considered the same, does now make and enter the following,

FINDINGS OF FACT

I.

Trial by jury was duly waived by both parties in open court. [7]

II.

That the plaintiff is the duly appointed, acting and qualified administratrix of the estate of John F. McClure, deceased, and is a resident of Spokane, Spokane County, Washington, and said plaintiff is the widow of the deceased.

III.

That the deceased enlisted for service in the United States Army on December 14, 1917, and was honorably discharged therefrom on a surgeon's certificate of disability on January 29, 1919, due to rheumatic heart, from which illness he died on July 28, 1936.

IV.

That while in the service the deceased applied for and was granted a policy of war risk term insurance in the sum of $10,000, insuring against death or total permanent disability occurring while said policy was in full force and effect, the disability indemnity being the amount of $57.50 per month, and premiums were paid thereon to include the month of January, 1919.

V.

That deceased became permanently and totally disabled on the 1st day of April, 1929.

VI.

That the date the deceased permitted his policy of insurance to lapse for failure to pay the premium thereon he was suffering from a compensable disability, to wit; rheumatic heart, for which there was then due and uncollected compensation, and on the date of total permanent disability there was due and uncollected compensation in an amount sufficient to have paid all premiums due upon said policy, had the same been applied in payment thereof since the date of lapsation, and said compensation [8] still remains uncollected by reason of the provisions of Section 210 of the World War Veterans Act, as amended, the deceased having first made claim for such compensation on the 15th day of April, 1929.

VII.

That Section 305 of the World War Veterans Act, as amended, provides for the revival of insurance which would have otherwise lapsed for nonpayment of premiums if at the time of lapsation the insured was suffering from a compensable disability for which compensation was due and uncollected and he subsequently became totally permanently disabled, or died having due and uncollected compensation.

VIII.

That the deceased left surviving, his widow Kathleen McClure and two children, Edward McClure and Margaret McClure.

IX.

That a disagreement exists as provided by Section 19 of the World War Veterans Act, as amended.

Done in open court this ___ day of _____, 1937.

_____

Judge

From the foregoing findings of fact the Court makes and enters the following,

CONCLUSIONS OF LAW.

I.

That the court has jurisdiction of the parties and subject matter to this action. [9]

II.

That the full face value of the insurance policy sued upon, less the unpaid premiums at 5% interest compounded annually to the 1st day of April, 1929, is revived and in full force and effect.

III.

That the plaintiff is entitled to recover from the defendant in her administrative capacity the accrued amount due on account of total permanent

disability from the 1st day of April, 1919, to and including the 28th day of July, 1936.

IV.

That plaintiff is entitled to recover in her individual capacity as widow of the decedent the accrued amount due from the 28th day of July, 1936, to the date hereof.

Done in open court this ___ day of _____, 1937.

_____

Judge

Presented by:

_____

Attorneys for Plaintiff

United States Attorney's Office. Rec'd Feb. 20, 1937. Spokane, Wash. [10]

[Endorsed]: Filed in the U. S. District Court Eastern Dist. of Washington—Mar. 10, 1937. A. A. LaFramboise, Clerk.

[Title of Court and Cause.]

DEFENDANT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This cause having come duly and regularly on for trial before the Honorable J. Stanley Webster, Judge of the above entitled Court, sitting without a jury, on the 17th day of September, 1936, the

plaintiff appearing in person and by her attorneys, Graham K. Bette and Alan G. Paine, the defendant appearing by its attorneys, J. M. Simpson, United States Attorney, Will G. Beardslee, Special Assistant to the Attorney General, and George R. Stuntz, Attorney, Department of Justice, evidence having been adduced by both parties and arguments having been made in support thereof, the Court did thereupon take said cause under advisement and thereafter briefs were submitted by said parties, and the Court having considered the same, does now make and enter the following

FINDINGS OF FACT.

I.

That trial by jury was duly waived by both parties in open Court.

II.

That the plaintiff is the duly appointed, acting and qualified administratrix of the estate of John F. McClure, deceased, [11] and is a resident of Spokane, Spokane County, Washington, and said plaintiff is the widow of the deceased, who died on July 28th, 1936.

III.

That the deceased enlisted for service in the United States Army on December 14, 1917, and was discharged therefrom on January 29, 1919.

IV.

That while in the service the deceased applied for and was granted a policy of War Risk Term insur-

ance in the sum of $10,000, insuring against death or total permanent disability occurring while said policy was in full force and effect, and premiums were paid thereon to include the month of January, 1919.

V.

That deceased became permanently and totally disabled on the 1st day of December, 1929, and was not permanently and totally disabled at any time previous to said date.

VI.

That the date the deceased permitted his policy of War Risk Term insurance to lapse for failure to pay premiums thereon, he was suffering from a compensable disability, to-wit: Rheumatic heart, for which there was due and uncollected compensation; and on December 1, 1929, there was due and uncollected compensation in an amount sufficient to have paid all premiums due on said policy, had the same been applied in payment thereof since the date of lapsation up to and including December 1, 1929, if said policy had not been terminated previous to said date by action of law.

VII.

That said policy sued upon lapsed for non-payment of premium due on January 31, 1919, and was not kept in full force and [12] effect thereafter by reason of Section 305, World War Veterans' Act as Amended, in that said Section 305 was repealed

by Public No. 2, 73d Congress (Title 38, Section 717 U. S. C.).

VIII.

That under the provisions of Section 301, World War Veterans' Act as amended (Title 39, Section 312, U. S. C.) the policy sued upon herein ceased and terminated on July 2, 1927, and was not in force and effect thereafter.

IX.

That the deceased left surviving, his widow, Kathleen McClure and two children, Edward McClure and Margaret McClure.

X.

That a disagreement exists as provided by Section 19 of the World War Veterans' Act as amended.

Done in open court this ___ day of _____, 1937.

_____

United States District Judge

From the foregoing Findings of Fact the Court makes and enters the following

CONCLUSIONS OF LAW.

I.

That the plaintiff is not entitled to recover in said action.

II.

That the defendant is entitled to a judgment of dismissal with prejudice and with costs to be taxed against the plaintiff according to law.

Done in open court this __ day of _____, 1937.

_____

United States District Judge

Presented by:

_____

Attorney, Department of Justice

Copy received Mar. 10, 1937. Alan G. Paine. Atty for Plaintiff. [13]

[Endorsed]: Filed in the U. S. District Court Eastern Dist. of Washington. Apr. 3, 1937. A. A. LaFramboise, Clerk.

[Title of Court and Cause.]

ORDER SETTLING FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This matter having come on for hearing before the Honorable J. Stanley Webster, Judge of the above-entitled court for settlement of the Findings of Fact and Conclusions of Law herein, the plaintiff appearing by her attorney Graham K. Betts, the defendant appearing by its attorneys, J. M. Simpson, United States Attorney, and George R. Stuntz, Attorney, Department of Justice, both parties having submitted proposed Findings of Fact and Conclusions of Law,

The Court does now make and enter the defendant's proposed Findings of Fact Nos. I, II, III, IV,

V, VIII, IX and X, and makes and enters the plaintiff's proposed Finding of Fact No. VI;

And the Court does further make and enter the defendant's proposed Conclusions of Law Nos. I and II, and does further make and enter plaintiff's proposed Conclusion of Law No. I;

Plaintiff excepts to the entry of defendant's proposed Finding of Fact No. VIII and to the entry of [14] defendant's proposed Conclusions of Law Nos. I and II, which exceptions are hereby allowed;

The Court refuses defendant's proposed Finding of Fact No. VII, to which defendant excepts and exception is allowed;

The Court further refuses plaintiff's Finding of Fact No. VII, to which the plaintiff excepts and exception is allowed;

And the Court further refuses the plaintiff's proposed Conclusions of Law Nos. II, III and IV, to each of which the plaintiff excepts and exception is allowed.

Dated this 3d day of April, 1937.

J. STANLEY WEBSTER
United States Judge for the Eastern District of Washington.

O. K. as to form. Graham K. Betts, Atty for Pltf.
George R. Stuntz, Atty for Deft. [15]

[Endorsed]: Filed in the U. S. District Court, Eastern Dist. of Washington. Apr. 3, 1937. A. A. LaFramboise, Clerk.

United States District Court Eastern District of Washington Northern Division.

No. L-1803

KATHLEEN McClure, as administratrix of the estate of John F. McClure, Deceased, and KATHLEEN McCLURE, individually,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

JUDGMENT.

This cause having come on regularly for trial before the undersigned Judge of the above entitled Court on the 17th day of September, 1936, the plaintiff appearing in person and by her attorneys, Graham K. Betts and Alan G. Paine, and the defendant appearing by its attorneys, J. M. Simpson, United States Attorney for the Eastern District of Washington, Will G. Beardslee, Special Assistant to the Attorney General, and George R. Stuntz, Attorney, Department of Justice, a jury having been waived, and the plaintiff having offered and submitted her evidence, and the defendant having offered and submitted its evidence, and the Court having made findings of fact and conclusions of

law in the premises, and the Court being fully advised in the premises, it is hereby

Ordered, adjudged and decree that the above entitled cause be and the same is hereby dismissed with prejudice and with costs properly taxed by law against plaintiff.

To all of which plaintiff excepts and exception allowed.

Done in open court this 3rd day of April, 1937.

J. STANLEY WEBSTER
United States District Judge.

O. K. as to form. Graham K. Betts, Atty for Pltf.

Presented by:

George R. STUNTZ
Attorney, Department of Justice [16].

[Endorsed]: Filed in the U. S. District Court. Eastern Dist. of Washington. Apr. 3, 1937. A. A. LaFramboise, Clerk.

[Title of Court and Cause.]

STIPULATION.

It is hereby stipulated by and between the parties hereto that the plaintiff may have to and including the first day of July, 1937, to lodge and serve her proposed Bill of Exceptions herein and that the

present term of court be extended to and including said date.

Dated this 3d day of April, 1937.

GRAHAM K. BETTS,
Attorney for Plaintiff
J. J. SIMPSON
United States Attorney
GEORGE R. STUNTZ
Attorney, Department of Justice
Attorneys for Defendant [17]

[Endorsed]: Filed in the U. S. District Court, Eastern Dist. of Washington—Apr. 3, 1937. A. A. LaFramboise, Clerk.

[Title of Court and Cause.]

ORDER.

Upon stipulation of the parties hereto, it is hereby ordered that the plaintiff may have to and including the first day of July, 1937, to lodge and serve her proposed Bill of Exceptions herein and the present term of court is hereby extended to and including said date.

Dated this 3d day of April, 1937.

J. STANLEY WEBSTER
United States Judge for the Eastern District of Washington.

O. K. as to form. George R. Stuntz, Atty for Deft. Graham K. Betts, Atty. for Pltf. [18]

[Endorsed]: Lodged U. S. District Court, Eastern Dist. of Washington Jun. 29, 1937. A. A. LaFramboise, Clerk. E. L. Colby, Deputy. Filed in the U. S. District Court, Eastern Dist. of Washington—Jul. 1, 1937. A. A. LaFramboise, Clerk. E. L. Colby, Deputy.

[Title of Court and Cause.]

PLAINTIFF'S PROPOSED BILL OF EXCEPTIONS.

Be it remembered that heretofore and on the 17th day of September, 1936, the above entitled cause came on regularly for trial in the above entitled Court before the Honorable J. Stanley Webster, Judge of said Court, sitting without a jury. The plaintiff appearing in person and by her attorneys Graham K. Betts and Alan G. Paine, the defendant, United States of America, being represented by J. M. Simpson, United States Attorney, Will C. Beardslee, Special Assistant to the Attorney General and George R. Stuntz, Attorney, Department of Justice. Whereupon the following proceedings were had. It was stipulated in open court that trial by jury be waived. Thereafter testimony was taken on behalf of both parties and the cause was argued to the court and taken under advisement and briefs were submitted by both parties and within the time limited by law the plaintiff submitted requested findings of fact and conclusions of law as follows:

FINDINGS OF FACT.

I.

Trial by jury was duly waived by both parties in open court. [19].

II.

That the plaintiff is the duly appointed, acting and qualified administratrix of the estate of John F. McClure, deceased, and is a resident of Spokane, Spokane County, Washington, and said plaintiff is the widow of the deceased.

III.

That the deceased enlisted for service in the United States Army on December 14, 1917, and was honorably discharged therefrom on a surgeon's certificate of disability on January 29, 1919, due to rheumatic heart, from which illness he died on July 28, 1936.

IV.

That while in the service the deceased applied for was granted a policy of war risk term insurance in the sum of $10,000, insuring against death or total permanent disability occurring while said policy was in full force and effect, the disability indemnity being the amount of $57.50 per month, and premiums were paid thereon to include the month of January, 1919.

V.

That deceased became permanently and totally disabled on the 1st day of April, 1929.

VI.

That the date the deceased permitted his policy of insurance to lapse for failure to pay the premium thereon he was suffering from a compensable disability, to wit; rheumatic heart, for which there was then due and uncollected compensation, and on the date of total permanent disability there was due and uncollected compensation in an amount sufficient to have paid all premiums due upon said policy, had the same been applied in payment thereof since the date of lapsation, and said compensation [20] still remains uncollected by reason of the provisions of Section 210 of the World War Veterans Act, as amended, the deceased having first made claim for such compensation on the 15th day of April, 1929.

VII.

That Section 305 of the World War Veterans Act, as amended, provides for the revival of insurance which would have otherwise lapsed for nonpayment of premiums if at the time of lapsation the insured was suffering from a compensable disability for which compensation was due and uncollected and he subsequently became totally permanently disabled, or died having due and uncollected compensation.

VIII.

That the deceased left surviving, his widow Kathleen McClure and two children, Edward McClure and Margaret McClure.

IX.

That a disagreement exists as provided by Section 19 of the World War Veterans Act, as amended.

CONCLUSIONS OF LAW.

I.

That the court has jurisdiction of the parties and subject matter to this action.

II.

That the full face value of the insurance policy sued upon, less the unpaid premiums at 5% interest compounded annually to the 1st day of April, 1929, is revived and in full force and effect.

III.

That the plaintiff is entitled to recover from the defendant in her administrative capacity the accrued amount due on account of total permanent disability from the 1st day of [21] April, 1919, to and including the 28th day of July, 1936.

IV.

That plaintiff is entitled to recover in her individual capacity as widow of the decedent the accrued amount due from the 28th day of July, 1936, to the date hereof.

The defendant thereafter and within the time limited by law submitted its requested fiindings of fact and conclusions of law as follows:

FINDINGS OF FACT.

I.

That trial by jury was duly waived by both parties in open Court.

II.

That the plaintiff is the duly appointed, acting and qualified administratrix of the estate of John F. McClure, deceased, and is a resident of Spokane, Spokane County, Washington, and said plaintiff is the widow of the deceased, who died on July 28, 1936.

III.

That the deceased enlisted for service in the United States Army on December 14, 1917, and was discharged therefrom on January 29, 1919.

IV.

That while in the service the deceased applied for and was granted a policy of War Risk Term Insurance in the sum of $10,000, insuring against death or total permanent disability occurring while said policy was in full force and effect, and premiums were paid thereon to include the month of January, 1919.

V.

That deceased became permanently and totally disabled on the 1st day of December, 1929, and was not permanently and totally disabled at any time previous to said date. [22]

VI.

That the date the deceased permitted his policy

of War Risk Term Insurance to lapse for failure to pay premiums thereon, he was suffering from a compensable disability, to-wit: Rheumatic heart, for which there was due and uncollected compensation; and on December 1, 1929, there was due and uncollected compensation in an amount sufficient to have paid all premiums due on said policy, had the same been applied in payment thereof since the date of lapsation up to and including December 1, 1929, if said policy had not been terminated previous to said date by action of law.

VII.

That said policy sued upon lapsed for non-payment of premium due on January 31, 1919, and was not kept in full force and effect thereafter by reason of Section 305, World War Veterans' Act as amended, in that said Section 305, was repealed by Public No. 2, 73d Congress (Title 38, Section 717 U. S. C.).

VIII.

That under the provisions of Section 301, World War Veterans' Act as amended (Title 38, Section 512 U. S. C.) the policy sued upon herein ceased and terminated on July 2, 1927, and was not in force and effect thereafter.

IX.

That the deceased left surviving, his widow, Kathleen McClure and two children, Edward McClure and Margaret McClure.

X.

That a disagreement exists as provided by Section 19 of the World War Veterans' Act as amended.

CONCLUSIONS OF LAW.

I.

That the plaintiff is not entitled to recover in said action. [23]

II.

That the defendant is entitled to a judgment of dismissal with prejudice and with costs to be taxed against the plaintiff according to law.

The Court after consideration of said cause and on the 3rd day of April, 1937, entered its order settling the findings of fact and conclusions of law whereby it made and entered the following findings of fact and conclusions of law:

FINDINGS OF FACT.

I.

That trial by jury was duly waived by both parties in open court.

II.

That the plaintiff is the duly appointed, acting and qualified administratrix of the estate of John F. McClure, deceased, and is a resident of Spokane, Spokane County, Washington, and said plaintiff is the widow of the deceased, who died on July 28, 1936.

III.

That the deceased enlisted for service in the United States Army on December 14, 1917, and was discharged therefrom on January 29, 1919.

IV.

That while in the service the deceased applied for and was granted a policy of War Risk Term Insurance in the sum of $10,000, insuring against death or total permanent disability occurring while said policy was in full force and effect, and premiums were paid thereon to include the month of January, 1919. [24]

V.

That deceased became permanently and totally disabled on the 1st day of December, 1929, and was not permanently and totally disabled at any time previous to said date.

VI.

That the date the deceased permitted his policy of insurance to lapse for failure to pay the premium thereon he was suffering from a compensable disability, to wit; rheumatic heart, for which there was then due and uncollected compensation, and on the date of total permanent disability there was due and uncollected compensation in an amount sufficient to have paid all premiums due upon said policy, had the same been applied in payment thereof since the date of lapsation, and said compensation still remains uncollected by reason of the provisions of Section 210 of the World War Vet-

erans Act, as amended, the deceased having first made claim for such compensation on the 15th day of April, 1929.

VII.

That under the provisions of Section 301, World War Veterans' Act, as amended (Title 38, Section 512, U. S. C.) the policy sued upon herein ceased and terminated on July 2, 1927, and was not in force and effect thereafter.

VIII.

That the deceased left surviving, his widow, Kathleen McClure and two children, Edward McClure and Margaret McClure.

IX.

That a disagreement exists as provided by Section 19 of the World War Veterans' Act as amended. [25]

CONCLUSIONS OF LAW

I.

That the court has jurisdiction of the parties and subject matter to this action.

II.

That the plaintiff is not entitled to recover in said action.

III.

That the defendant is entitled to a judgment of dismissal with prejudice and with costs to be taxed against the plaintiff according to law.

The order settling findings of fact and conclusions of law is as follows:

"This matter having come on for hearing before the Honorable J. Stanley Webster, Judge of the above-entitled court for settlement of the Findings of Fact and Conclusions of Law herein, the plaintiff appearing by her attorney Graham K. Betts, the defendant appearing by its attorneys, J. M. Simpson, United States Attorney, and George R. Stuntz, Attorney, Department of Justice, both parties having submitted proposed Findings of Fact and Conclusions of Law,

"The Court does now make and enter the defendant's proposed Findings of Fact Nos. I, II, III, IV, V, VIII, IX and X, and make and enters the plaintiff's proposed Finding of Fact No. VI;

"And the Court does further make and enter the defendant's proposed Conclusions of Law Nos. I and II, and does further make and enter plaintiff's proposed Conclusion of Law No. I;

"Plaintiff excepts to the entry of defendant's proposed Finding of Fact No. VIII and to the entry of defendant's proposed Conclusions of Law Nos. I and II, which exceptions are hereby [26] allowed;

The Court refuses defendant's proposed Finding of Fact No. VII, to which defendant excepts and exception is allowed;

The Court further refuses plaintiff's Finding of Fact No. VII, to which the plaintiff excepts and exception is allowed;

proposed Conclusions of Law Nos. II, III and IV,

And the Court further refuses the plaintiff's

to each of which the plaintiff excepts and exception is allowed.

Dated this 3d day of April, 1937.

J. STANLEY WEBSTER
United States Judge for the
Eastern District of Washington

The plaintiff objected to the entry of the Court's finding No. VII, being the defendant's proposed finding No. VIII, for the reason that Section 301 of the World War Veterans' Act did not limit the applicability of Section 305 of the World War Veterans' Act, as amended, but that the latter constituted an exception to the termination of war risk term insurance; and objected to the Court's Conclusions of Law Nos. I and II, being the poposed Conclusions by the defendant, for the reason that the same were contrary to law and could not be sustained in view of Section 305 of the World War Veterans' Act, as amended. Thereupon the following order was entered extending the time for lodging and serving the proposed Bill of Exceptions and extending the September, 1936, term of court.

ORDER

Upon stipulation of the parties hereto, it is hereby Ordered that the plaintiff may have to and including the first day of July, 1937, to lodge and serve her proposed Bill of Exceptions herein

and the present term of court is hereby extended to and including said date. [27]

Dated this 3d day of April, 1937.

J. STANLEY WEBSTER
United States Judge for the
Eastern District of Washington.

And now, in furtherance of justice and that right and justice may be done the defendant, it prays that this, its bill of exceptions, may be settled, allowed, signed, sealed by the Court and made a part of the record.

GRAHAM K. BETTS
ALAN G. PAINE
Attorney for Plaintiff.

O. K. as a sufficient & true bill.

J. M. SIMPSON
U. S. Atty.
GEORGE R. STUNTZ
Atty. Dept. of Justice.

Copy rec'd this 29th of June, 1937.

J. M. SIMPSON
U. S. Atty. W. [28]

[Endorsed]: Filed in the U. S. District Court, Eastern Dist. of Washington, Jul 1, 1937. A. A. La Framboise, Clerk. E. L. Colby, Deputy.

[Title of Court and Cause.]

ORDER

The above cause having come on for hearing on application of Plaintiff to settle the Bill of Ex-

ceptions herein, counsel for both parties being present, and it appearing to the Court that said Bill of Exceptions contains all of the material facts and matters occurring upon the trial of this cause and thereafter until the judgment herein necessary to the prosecution of an appeal herein, except the exhibits introduced in evidence, which are hereby made a part of said bill of exceptions; and the parties hereto having stipulated and agreed upon said bill, the court being duly advised, it is by the court

Ordered that said bill of exceptions be, and it hereby is settled as a true bill of exceptions in said cause, which contains all of the material facts, matters, things and exceptions therefor, occurring upon the trial of said cause and not of record heretofore necessary to a proper termination of an appeal herein and the same is hereby certified accordingly by the undersigned Judge of this Court, who presided at the trial of said cause, as a true, full and correct bill of exceptions and the Clerk of the Court is hereby ordered to file the same as a record in this cause and transmit the same to the Honorable Circuit Court of Appeals for the Ninth Circuit. [29]

It is further ordered that the Clerk of this Court attach all of the exhibits in this cause to the said bill of exceptions, making the same a part hereof.

Done in open court this 1st day of July, 1937.

J. STANLEY WEBSTER
Judge

Presented by:
GRAHAM K. BETTS
Attorneys for Plaintiff

Copy rec'd this 29th of June, 1937. J. M. Simpson, U. S. Atty. W. [30]

[Endorsed]: Filed in the U. S. District Court, Eastern Dist. of Washington, Jun 29, 1937. A. A. La Framboise, Clerk. E. L. Colby, Deputy.

[Title of Court and Cause.]

NOTICE OF APPEAL

To: United States of America and J. M. Simpson, United States District Attorney and George R. Stunts, Special Assistant to the Attorney-General.

You and each of you will please take notice that Kathleen McClure, plaintiff in the above entitled cause, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment, decree and order entered in the above entitled cause on the 3rd day of April, 1937, and that the certified transcript of record will be filed in the said Appellate Court within thirty days from the filing of this notice.

GRAHAM K. BETTS
ALAN G. PAINE
Attorneys for Plaintiff

Copy rec'd this 29th of June, 1937. J. M. Simpson. U. S. Atty. W. [31]

[Endorsed]: Filed in the U. S. District Court, Eastern Dist. of Washington, June 29, 1937. A. A. La Framboise, Clerk. E. L. Colby, Deputy.

[Title of Court and Cause.]

PETITION FOR APPEAL

The above named plaintiff, feeling herself aggrieved by the order, judgment and decree made and entered in this cause on the 3rd day of April, 1937, does hereby appeal from the said order, judgment and decree in each and every part thereof to the Circuit Court of Appeals for the Ninth Circuit for the reasons specified in the assignment of errors herein, and said plaintiff prays that her appeal be allowed and citation be issued as provided by law, and that a transcript of the record, proceedings and papers upon which said order, judgment and decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, as by the rules of said court in such cases made and provided.

GRAHAM K. BETTS
ALAN G. PAINE
Attorneys for Plaintiff

Copy rec'd this 29th of June, 1937. J. M. Simpson, U. S. Atty. W. [32]

[Endorsed]: Filed in the U. S. District Court, Eastern Dist. of Washington, Jun 29, 1937. A. A. La Framboise, Clerk. E. L. Colby, Deputy.

[Title of Court and Cause.]

ASSIGNMENTS OF ERROR

Comes now Kathleen McClure, plaintiff in the above entitled action by and through her attorneys, Graham K. Betts and Alan G. Paine, and in connection with her petition for an appeal herein and the allowance of the same, assigns the following errors which occurred at the trial of said cause and which were duly excepted to by her at the time of said trial and upon which she relies to reverse the judgment herein.

I.

The District Court erred in entering judgment of dismissal herein in favor of the defendant.

II.

The District Court erred in making and entering defendant's proposed finding of fact No. 8, which is as follows:

> "That under the provisions of Section 301, World War Veterans' Act as Amended (Title 38, Section 312, U.S.C.) the policy sued upon herein ceased and terminated on July 2, 1927, and was not in force and effect thereafter."

to the entry of which the plaintiff noted an exception.

III.

The District Court erred in making and entering defendant's proposed conclusion of law No. 1, which is as follows:

> "That the plaintiff is not entitled to recover in said action."

to the entry of which the plaintiff noted an exception. [33]

IV.

The District Court erred in making and entering defendant's proposed conclusion of law No. 2, which is as follows:

> "That the defendant is entitled to a judgment of dismissal with prejudice and with costs to be taxed against the plaintiff according to law."

to the entry of which the plaintiff noted an exception.

V.

The District Court erred in its failure and refusal to make and enter plaintiff's proposed finding of fact No. 7, which is as follows:

> "That Section 305 of the World War Veterans Act, as amended, provides for the revival of insurance which would have otherwise lapsed for nonpayment of premiums if at the time of lapsation the insured was suffering from a compensable disability for which compensation was due and uncollected and he subsequently became totally permanently disabled,

or died having due and uncollected compensation."

to which failure the plaintiff noted an exception.

VI.

The District Court erred in failing and refusing to make and enter plaintiff's proposed conclusion of law No. 2, which is as follows:

"That the full face value of the insurance policy sued upon, less the unpaid premiums at 5% interest compounded annually to the 1st day of April, 1929, is revived and in full force and effect."

to the failure and refusal of which the plaintiff noted an exception.

VII.

The District Court erred in its failure and refusal to make and enter plaintiff's proposed conclusion of law No. 3, which is as follows: [34]

"That the plaintiff is entitled to recover from the defendant in her administrative capacity the accrued amount due on account of total permanent disability from the 1st day of April, 1919, to and including the 28th day of July, 1936."

to the failure and refusal of which the plaintiff noted an exception.

VIII.

The District Court erred in failing and refusing to make and enter plaintiff's proposed conclusion of law No. 4, which is as follows:

"That plaintiff is entitled to recover in her individual capacity as widow of the decedent

the accrued amount due from the 28th day of July, 1936, to the date hereof."

to the failure and refusal of which the plaintiff noted an exception.

GRAHAM K. BETTS
ALAN G. PAINE
Attorneys for Plaintiff

Copy rec'd this 29th of June, 1937. J. M. Simpson, U. S. Atty. W. [35]

[Endorsed]: Filed in the U. S. District Court Eastern Dist. of Washington, July 1, 1937. A. A. La Framboise, Clerk. E. L. Colby, Deputy.

[Title of Court and Cause.]

ORDER ALLOWING APPEAL

On the application of the defendant herein, it is hereby

Ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment heretofore entered and filed herein on the 3rd day of April, 1937, be and the same is hereby allowed.

It is further ordered that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit. It is further ordered that cost bond in the sum of $500.00 be filed.

Done in open court this 1st day of July, 1937.

J. STANLEY WEBSTER
Judge.

Presented by:
GRAHAM K. BETTS
Attorney for Plaintiff

Copy rec'd this 29th of June, 1937. J. M. Simpson, U. S. Atty. W. [36]

[Endorsed]: Filed in the U. S. District Court, Eastern Dist. of Washington, July 1, 1937. A. A. La Framboise, Clerk. E. L. Colby, Deputy.

[Title of Court and Cause.]

CITATION ON APPEAL

United States of America
Eastern District of Washington
Northern Division—ss.

The President of the United States to: United States of America, and J. M. Simpson, United States District Attorney and George R. Stuntz, Special Assistant to the Attorney-General.

You and each of you are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals to be held at the City of San Francisco, California, in the Ninth Judicial Circuit, on the 31st day of July, 1937, pursuant to an order allowing appeal filed in the office of the Clerk of the above entitled court, appealing from the final judgment signed and filed on the 3rd day of April, 1937, wherein the United States of America is defendant, and Kathleen McClure, as administratrix of the estate of John F. McClure,

deceased, and Kathleen McClure, individually, is plaintiff, to show cause, if any there be, why the judgment rendered against the said appellant as in said order allowing appeal mentioned, should not be corrected and why justice should not be done to the parties in that behalf.

Witnesseth the Honorable J. Stanley Webster, United States District Judge for the Eastern District of Washington, Northern Division, this 1st day of July, 1937.

J. STANLEY WEBSTER
Judge

Presented by:
GRAHAM K. BETTS

Copy rec'd this 29th of June, 1937. J. M. Simpson, U. S. Atty. W. [37]

[Endorsed]: Filed in the U. S. District Court, Eastern Dist. of Washington, July 1, 1937. A. A. La Framboise, Clerk. E. L. Colby, Deputy.

[Title of Court and Cause.]

COST BOND ON APPEAL

Know all men by these presents:

That the American Surety Company of New York, a corporation organized under the laws of the State of New York, and authorized to transact in the State of Washington the business of entering into undertakings such as that evidenced by this con-

tract, is held and firmly bound unto United States Of America, the defendant above named, in the just and full sum of five hundred ($500.00) Dollars, for which sum, well and truly to be paid, it binds itself, its successors and assigns, firmly by these presents.

Sealed with its seal and dated this 29th day of June, 1937.

The condition of this obligation is such that whereas, on the April 3, 1937, the above entitled action and court, the plaintiff's plea was denied and whereas, the plaintiff has petitioned for and been allowed by the above court an appeal to the United States Circuit Court of Appeals, therefore, the condition of this obligation is such that if the said appellants shall prosecute said appeal to effect, and answer and pay all costs, if they fail to make good their plea, then the above obligation to be void, else to remain in full force and virtue.

AMERICAN SURETY COMPANY
OF NEW YORK
By W. L. BERRY
Resident Vice-President

[Corporate Seal] Attest: G. E. NEVERS
Resident Assistant Secretary

[38]

The foregoing undertaking approved by the Court this 1st day of July, 1937.

J. STANLEY WEBSTER
Judge of the United States District Court
for the Eastern District of Washington,
Northern Division.

Presented by
GRAHAM K. BETTS
Atty. for Pltf. [39]

[Endorsed]: Filed in the U. S. District Court, Eastern Dist. of Washington, July 1, 1937. A. A. La Framboise, Clerk. Eva M. Hardin, Deputy.

[Title of Court and Cause.]

PRAECIPE

To the Clerk of the above entitled court:

You will please certify to the Circuit Court of Appeals for the Ninth Circuit, at San Francisco, the documents listed below.

Amended Complaint.

Answer to Amended Complaint.

Plaintiff's proposed Findings of Fact and Conclusions of Law.

Defendant's proposed Findings of Fact and Conclusions of Law.

Order settling findings of fact and conclusions of law.

Judgment

Stipulation extending time to lodge and serve Bill of Exceptions to July 1, 1937.

Order extending time and term to lodge and serve Bill of Exceptions to July 1, 1937.

Bill of Exceptions.

Order settling bill of exceptions.

Notice of appeal.
Petition for appeal.
Assignments of error.
Order allowing appeal. [40]
Citation on appeal.
Bond on appeal.
This praecipe.

GRAHAM K. BETTS
ALAN G. PAINE
Attorneys for Plaintiff

Copy rec'd this 29th of June, 1937. J. M. Simpson, U. S. Atty. W. [41]

[Title of Court and Cause.]

CLERK'S CERTIFICATE TO TRANSCRIPT OF RECORD

United States of America,
Eastern District of Washington—ss.

I, A. A. LaFramboise, Clerk of the District Court of the United States for the Eastern District of Washington, do hereby certify the foregoing typewritten pages numbered from 1 to 41 inclusively, to be a full, true, correct and complete copy of so much of the record, papers and all other proceedings in the above entitled cause, as are necessary to the hearing of the appeal therein, in the United States Circuit Court of Appeals, as called for by the appellant in his praecipe, as the same remain of record and on file in the office of the Clerk of

said District Court, and that the same constitute the record on appeal from the judgment and decree of the District Court of the United States for the Eastern District of Washington, to the Circuit Court of Appeals for the Ninth Judicial Circuit, San Francisco, California.

I further certify that I hereto attach and herewith transmit the original Citation issued in this cause.

I further certify that the cost of preparing and certifying the foregoing transcript is the sum of $4.10, and that the said sum has been paid to me by Graham K. Betts, Attorney for the Appellant.

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court at Spokane in said District, this 10th day of July, 1937.

[Seal] A. A. LA FRAMBOISE
Clerk.

[Endorsed]: Filed in the U. S. District Court Eastern Dist. of Washington July 1, 1937. A. A. LaFramboise, Clerk. E. L. Colby, Deputy.

[Title of Court and Cause.]

CITATION ON APPEAL

United States of America
Eastern District of Washington
Northern Division—ss.

The President of the United States to: United States of America, and J. M. Simpson, United States District Attorney and George R. Stuntz, Special Assistant to the Attorney-General.

You and each of you are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals to be held at the City of San Francisco, California, in the Ninth Judicial Circuit, on the 31st day of July, 1937, pursuant to an order allowing appeal filed in the office of the Clerk of the above entitled court, appealing from the final judgment signed and filed on the 3rd day of April, 1937, wherein the United States of America is defendant, and Kathleen McClure, as administratrix of the estate of John F. McClure, deceased, and Kathleen McClure, individually, is plaintiff, to show cause, if any there be, why the judgment rendered against the said appellant as in said order allowing appeal mentioned, should not be corrected and why justice should not be done to the parties in that behalf.

Witnesseth the Honorable J. Stanley Webster United States District Judge for the Eastern Dis-

trict of Washington, Northern Division, this 1st day of July, 1937.

J. STANLEY WEBSTER
Judge

Presented by:
GRAHAM K. BETTS

Copy rec'd this 29th of June, 1937. J. M. Simpson, U. S. Atty. W.

[Endorsed]: No. 8596. United States Circuit Court of Appeals for the Ninth Circuit. Kathleen McClure, as Administratrix of the Estate of John F. McClure, Deceased, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Eastern District of Washington, Northern Division. Filed July 12, 1937.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

Upon Appeal From the District Court of the United States for the Eastern District of Washington, Northern Division

Proceedings had in the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals for the Ninth Circuit

Excerpt From Proceedings of Wednesday, February 2, 1938

Before WILBUR, DENMAN, STEPHENS, Circuit Judges

No. 8596

Order of submission

Ordered appeal in above cause argued by Mr. Graham K. Betts, counsel for appellant, and by Mr. Newman A. Townsend, Special Attorney Department of Justice, counsel for appellee, and submitted to the court for consideration and decision.

United States Circuit Court of Appeals for the Ninth Circuit

Excerpt From Proceedings of Monday, March 28, 1938

Before DENMAN, MATHEWS, and HEALY, Circuit Judges

No. 8596

Order directing filing of opinion and filing and recording of judgment

By direction of the Court, ordered that the typewritten opinion this day rendered by this court in above cause be forthwith filed by the clerk, and that a judgment be filed and recorded in the minutes of this court in accordance with the opinion rendered.

In the United States Circuit Court of Appeals for the Ninth Circuit

No. 8596. Mar. 28, 1938

KATHLEEN MCCLURE, AS ADMINISTRATRIX OF THE ESTATE OF JOHN F. MCCLURE, DECEASED, AND INDIVIDUALLY, APPELLANT

vs.

UNITED STATES OF AMERICA, APPELLEE

Upon Appeal From the District Court of the United States for the Eastern District of Washington, Northern Division

CONSTITUTIONAL LAW

Where a statute is amended and the amendment reenacts portions of the statute the portion so reenacted should be deemed to be effective from the time of its first adoption.

If the language of a statute is not open to doubt the plain words of the statute must be followed. However, if doubt as to Congressional intent exists resort may be had to legislative history and administrative interpretation.

INSURANCE VIII

Where insured permitted his insurance to lapse in 1919, and he became totally disabled in December 1929, at which time compensation was due and uncollected sufficient to revive his insurance under Sec. 305, W. W. V. A. of 1924, as amended, plaintiff may recover, even though Sec. 301 of this act provided that yearly renewable term insurance should cease July 2, 1927.

CONTRACTS 11 (1); INSURANCE VIII; UNITED STATES 1

There is no inherent reason why the benefactions of Section 305, W. W. V. A., should be extended to disabled veterans holding other forms of war risk insurance and denied to others similarly situated whose policies lapsed before conversion of such forms.

The broad beneficient terms of Congress expressed in Sec. 305 are applicable to any type of insurance which lapsed and was thus lost. The Congressional purpose to terminate yearly renewable term insurance does not conflict with extension of relief to veterans whose policies lapsed when the Government should have supplied the means to prevent lapse, but failed by delay in awarding compensation.

STATUTES AND REGULATIONS VI (7) (10)

Section 301, W. W. V. A. 1924, as amended, does not prohibit the application of Sec. 305, to permit recovery on a lapsed war risk term insurance policy by the veteran or his beneficiaries where there existed due and uncollected compensation even though the date of total disability occurred after July 2, 1927, the date of termination of yearly renewable term insurance as provided in Sec. 301, supra.

There are no inconsistencies between Sections 301 and 305, W. W. V. A., but if it be assumed a conflict exists between the general provision of Sec. 301 and the special provision of Sec. 305, the special terms of the statute should control.

The language of Sec. 305, W. W. V. A. is too clear to justify the aid of legislative history or administrative interpretation, particu-

larly where the administrative practice is not clearly established or long continued.

Before WILBUR, DENMAN, and STEPHENS, Circuit Judges.

WILBUR, Circuit Judge: This action was brought by John F. McClure, who claimed that he had become totally and permanently disabled and was entitled to recover upon his war risk insurance. Subsequently he died, and the action was continued by his widow as administratrix of his estate, and individually. The action is predicated upon § 305 of the World War Veterans Act of 1924 (43 Stat. 607, 626), as amended.

The case was tried without a jury and the trial court made its findings of fact which brought the case squarely within the provisions of § 305, supra. The trial court found that the deceased enlisted December 14, 1917, and was discharged January 29, 1919; that he applied for and was granted a policy of war risk term insurance in the sum of $10,000 and paid premiums thereon to and including January 1919; that he became permanently and totally disabled on December 1, 1929, and had not been permanently or totally disabled at any time previous to that date; that on the date the deceased permitted his policy of insurance to lapse for failure to pay the premium in 1919 he was suffering from a compensable disability for which there was then due and uncollected compensation; that on the date of total permanent disability there was due and uncollected compensation in an amount sufficient to pay all premiums due upon said policy had the same been applied in payment thereof since the date the insurance lapsed and that said compensation still remains uncollected by reason of the provisions of § 210 of the World War Veterans Act as amended, the deceased having first made claim for such compensation on the 15th day of April 1929; that the deceased left surviving him his widow and two children. The court concluded as a matter of law that the plaintiff was not entitled to recover because under the provisions of § 301 of the World War Veterans Act, as amended, the policy sued upon ceased and terminated July 2, 1927.

Although the facts found by the trial court brought the case clearly within the provisions of § 305, supra (38 USCA § 516), it is claimed by the government that § 301 of the World War Veterans' Act of 1924, as amended, prohibits the application of § 305 to yearly renewable term insurance where the loss occurred after July 2, 1927, because, as that section (§ 301) was amended June 2, 1926 (44 Stat. 686) it provided that yearly term insurance should cease July 2, 1927. The effect of this interpretation of these two sections (301, 305) would be that if a veteran died or became totally and permanently disabled after the enactment of the World War Veterans' Act of 1924, and before July 2, 1927, he would be entitled to recover under the conditions set forth in § 305, but if death or permanent disability occurred thereafter neither he nor his beneficiaries could recover because of the provisions of the statute (§ 301) declaring that yearly renewable term insurance should cease on July 2, 1927. The government claims that its view is supported by the practice of the Vet-

erans' Bureau and by the decision of the Circuit Court of Appeals of the Tenth Circuit in Skelton v. U. S., 88 F. (2d) 599, upon rehearing. Before considering these matters we will examine the statutes involved and their legislative history.

The provisions found in § 305 of the Act of 1924 are predicated upon a somewhat similar provision of § 408 added to the War Risk Insurance Act of 1921 (42 Stat. 147, 156) by the third proviso of that section. It applied only to compensation for "wounds or disease suffered or contracted in line of service" and was retroactive in favor of those who had died "from said wounds or disease." The Act of 1924 repealed the War Risk Insurance Act as amended (43 Stat. 629, § 601). The repealing act provided that "the sections of this codification herein applicable thereto shall be in force in lieu thereof subject to the limitations contained in this title" (§ 601); and in § 602 that the "repeal of the several acts as provided in §§ 600 and 601 hereof shall not affect any act done or any right or liability accrued, * * * but all such rights and liabilities under said act shall continue and may be enforced in the same manner as if said repeal had not been made * * *."

Sec. 305 of the World War Veterans' Act of 1924 set out in the footnote [1] limited the right to collect insurance which had lapsed to those cases:

1. Where the person at the time of the lapse was suffering from a compensable disability;

2. For which compensation was not collected;

3. Dies or has died or becomes or has become permanently and totally disabled; and

4. At the time of such total and permanent and total disability was or is entitled to compensation remaining uncollected;

5. The amount of recovery to be limited to the amount which such uncollected compensation would purchase "if applied as premiums when due."

It is clear that § 305 as enacted June 7, 1924, supra, applied to the holders of yearly term insurance which had lapsed prior to the passage of the act under the circumstances and conditions described in the section. Sec. 301 of the same act was directed to the problem of converting yearly term insurance to other forms of insurance provided by law and regulation. It provided that "not later than July 2, 1926, all term insurance held by persons who were in the military service after April 6, 1917, shall be converted, without medical examination, in such form or forms of insurance as may be

[1] "SECTION 5. Where any person has heretofore allowed his insurance to lapse while suffering from a compensable disability for which compensation was not collected and dies or has died, or becomes or has become permanently and totally disabled and at the time of such death or permanent total disability was or is entitled to compensation remaining uncollected, then and in that event so much of his insurance as said uncollected compensation, computed in all cases at the rate provided by section 202 of the War Risk Insurance Act as amended December 24, 1919, would purchase if applied as premiums when due, shall not be considered as lapsed; and the United States Veterans' Bureau is hereby authorized and directed to pay to said soldier, or his beneficiaries as the case may be the amount of said insurance less the unpaid premiums and interest thereon at 5 per centum per annum compounded annually in installments as provided by law."

prescribed by regulation and as the insured may request." It also provided that all term insurance shall cease on July 2, 1926, except when death or total permanent disability shall have occurred before July 2, 1926. It further provided that where yearly renewable term insurance had matured by reason of total permanent disability and the disability had ceased, the insured be given an additional period of two years from the date on which he is required to renew payment of premiums, in which to convert his term insurance.

The government insists that the express provisions for the extension of yearly term insurance contained in § 301 prevent the engrafting upon the provisions of § 301 of another exception based upon § 305. This contention cannot be maintained. Sections 301 and 305 are parts of the same statute enacted at the same time and must be construed together. The numbering of sections is wholly immaterial to their proper interpretation. The subdivision of the act into sections is purely a matter of convenience. Sec. 305 is just as much a part of the legislation in § 301 as though it had been added to § 301 as a paragraph thereof.

A basic fallacy in the contention that § 305 is limited by § 301 providing that yearly term insurance shall cease July 2, 1926, is the implied contention that § 305 makes provision for extending yearly term insurance beyond July 2, 1926. Sec. 305 does not so provide. It deals with the specified case above outlined. It does not extend or renew insurance with the correlative rights of insurer and insured. It exacts no promise, express or implied, for the payment of premiums. It does not permit such payment by the veteran. It provides for the payment of a gratuity in the form of insurance to the veteran, or to his beneficiaries (limited July 2, 1926, 44 Stat. 799, to widow, child or children, or dependent father or mother).[2] The amount was to be ascertained by the fiction of treating such uncollected compensation as though it had been actually paid to the veteran by the government and by him repaid to the government as premiums which would have been due upon his lapsed insurance if it had not lapsed. This legislation recognized that the ascertainment of the amount of compensation allowable under the law was a fact difficult of ascertainment; that the factual decision might be long delayed, and that it was subject to revision even then. If at any time prior to his death or permanent total disability he collects his compensation, neither he nor his beneficiaries can claim payment of the gratuity. That he is not permitted to pay any premium is a clear indication that the yearly term insurance is not continued in force under § 305.

Section 305, supra, limits the application of his unpaid compensation to the lapsed policy. It does not authorize the veteran to convert his policy before July 2, 1927, when the yearly term insurance ceases and to thereafter apply the amount of uncollected compensation to premiums upon some converted form of insurance, but specifically provides for the application of the uncollected compensation to the premiums which were due under the terms of the lapsed policy and not under the terms of the converted policy.

Furthermore, when the War Risk Insurance Act was passed, Congress contemplated the termination of all yearly renewable term war risk insurance within five years. The enactment of § 301, supra, in 1926, carried out this purpose, but the earlier acts provided for the voluntary conversion of yearly term insurance so that when the World War Veterans Act of 1924 was adopted several types of war risk insurance were outstanding.[a] There is no relation between this purpose to terminate yearly renewable term insurance and the purpose sought to be accomplished by § 305 of the War Risk Insurance Act of 1924 which codified and modified the proviso in § 408 of the War Risk Insurance Act of 1921 (42 Stat. 156, supra). The purpose of § 305, supra, was to make an allowance to a totally and permanently disabled veteran or, in case of his death, to his family, in the special circumstances therein set out. There is no inherent reason why this benefaction should be extended to those disabled veterans holding other forms of war risk insurance and denied to others similarly situated whose policies had lapsed before conversion to such forms. The moral obligation of the government in each case is the same and the purpose of Congress to discharge that moral obligation is not confined by the terms of the statute (§ 305) to any particular form of insurance. The broad beneficent purposes of Congress, expressed in § 305, are both in terms and spirit applicable to any type of insurance which has lapsed and thus been lost to the veteran. There is no reason to believe, at least none occurs to us and none has been suggested, that the Congressional purpose to terminate a particular form of insurance (the yearly renewable term insurance) conflicts either in spirit, letter or intent with the avowed purpose of extending relief to a veteran whose insurance had lapsed and thus ceased at a time when the government, in pursuance of its beneficent policy to make compensation to veterans suffering disability, itself should have supplied the means for preventing the lapse, and for continuing the policy in force until the loss occurred and failed to do so because of delay in making the award of such compensation.

We see no inconsistency between § 301 which provides that all term insurance shall cease on a certain date (July 2, 1926) and another provision (§ 305) that where such insurance has already ceased because it has lapsed, the former holder of the policy in the event of total permanent disability, or his beneficiaries in case of his death, may recover all or part of the amount of the policy, as the case may be, because the government deems itself under moral obligation to thus take care of such a situation.

---

[a] Compare, Shelton v. U. S. (C. C. A. 10), 88 F. (2d) 599, 601; U. S. v. Weaver (C. C. A. 4), 86 F. (2d) 372, 373; Lynch v. U. S., 292 U. S. 571, 577.

[b] The Annual Report of the Veterans Administration for the year 1924 (p. 427) shows that—

At the close of the fiscal year there were 562,600 government life insurance policies in force, amounting to	$2,984,573,450
Of this number 353,215 were on the converted plan, aggregating	1,375,542,920
209,385 were on the term plan, aggregating	1,609,030,530
An average of 3,500 new converted policies were being issued each month to World War Veterans aggregating	15,000,000

If it be considered that there is a conflict between the general provision of § 301 that the yearly term insurance shall cease July 2, 1926, and the special provision of § 305 for the payment to the insured or to his beneficiaries under the special circumstances therein set forth, the special terms of the statute should control, against its general declaration that yearly term insurance should cease on a certain date. This view is sustained by the familiar rule of statutory construction stated by the Supreme Court in Townsend v. Little, 109 U. S. 504, 512, as follows:

"According to the well settled rule, that general and specific provisions, in apparent contradiction, whether in the same or different statutes, and without regard to priority of enactment, may subsist together, the specific qualifying and supplying exceptions to the general, this provision for the execution of a particular class of deeds is not controlled by the law of the Territory requiring deeds generally to be executed with two witnesses. [citing] Pease v. Whitney, 5 Mass. 380; Nichols v. Bertram, 3 Pick. 341; The State, ex rel. Fosdick v. Perrysburg, 14 Ohio St. 472; London, etc., Railway v. Wandsworth Board of Works, Law Rep. 8 C. P. 185; Bishop on the Written Laws, § 112 a."

We have first dealt with these two sections as they appeared in the World War Veterans Act of 1924 because in subsequent legislation amending them they parted company. We will now consider such subsequent legislation.

On March 4, 1925, § 301 of the World War Veterans Act of 1924 was amended together with many other sections of the act. The amending act provides:

"SEC. 13. Sec. 301 of the World War Veterans Act of 1924 approved June 7, 1924, is hereby amended to read as follows:" Then follows a reenactment of the entire section with minor changes and the provision that "this section shall be deemed to be in effect as of June 7, 1924." So far as the question here under consideration is concerned there is no change in the terms of the section (43 Stat. 1302, 1309). The section was again amended June 2, 1926 (44 Stat. 686). The entire section was reenacted in amended form. It is substantially the same so far as matters involved herein are concerned, except that the date for the termination of yearly term insurance was changed to July 2, 1927. There is, however, a change in phraseology of the statute with regard to the date. Instead of providing as in the original act and in the amendment of 1925 above referred to, that "not later than July 2, 1926 all term insurance * * * shall be converted" and that "all term insurance shall cease on July 2, 1926," etc., the statute provided, "SEC. 301. Except as provided in the second paragraph of this section, not later than July 2, 1927, all yearly term renewable insurance * * * shall be converted," etc. The second paragraph thus referred to is set out below.[4]

[4] "All yearly renewable term insurance shall cease on July 2, 1927, except when death or total permanent disability shall have occurred before July 2, 1927: Provided, however, That the director may by regulation extend the time for the continuing of yearly renewable term insurance and the conversion thereof in any case where on July 2, 1927, conversion of such yearly renewable term insurance is impracticable or impossible due to the mental condition or disappearance of the insured."

The Sixty-ninth Congress amended § 301 of the World War Veterans Act of 1924 on June 2, 1926, and by a separate and later statute amended § 305, thus making § 305 the later expression of the legislative purpose. The statute amending § 301 reenacted the entire section, as amended, and again provided that, "this section shall be deemed to be in effect June 7, 1924." It contained the same language with reference to the conversion and termination of the yearly renewable term insurance July 2, 1927, that was contained in the section as amended in 1924 (43 Stat. 1309, supra).

On May 29, 1928, an act was passed to amend the World War Veterans Act (45 Stat. 964). Among other sections amended by this act were § 301 (45 Stat. 968) and § 305 (45 Stat. 971). So far as the conversion and termination of yearly renewable term insurance is concerned, the amendment of § 301 was identical with the provisions contained in the amendments of 1925 and 1926, supra. The amendment of § 301 again provided: "This section, as amended, shall be deemed to be in effect as of June 7, 1924." Sec. 305 was amended by adding a proviso that compensation should be deemed uncollected although uncollectible under previous statutes.

In determining the effect of these amendments to §§ 301 and 305 of the act of 1924, it should be borne in mind that where a statute is amended and the amendment reenacts portions of the statute the portion so reenacted should be deemed to be effective from the time of its first adoption. In re Fuel, 247 F. 829; Mott Store Co. v. St. Louis, etc. R. Co., 173 Mo. App. 189; 158 S. W. 108; People v. W. A. Wiebolt & Co., 257 Ill. 208, 191 N. E. 389; Barrows v. People's Gaslight & Coke Co., 75 F. 794.

The rule is stated in Corpus Juris 59, p. 1097, § 647:

"Where an amendment leaves certain portions of the original act unchanged, such portions are continued in force with the same meaning and effect they had before amendment, so where an amendatory act provides that an existing statute shall be amended to read as recited in the amendatory act such portions of the existing law as are retained either literally or substantially, are regarded as a continuation of the existing law and not as a new enactment."

Consequently, in determining the effect of the acts amending §§ 301 and 305 we are not necessarily concerned with the question as to which of the two is the later, even if we assume, as it is contended by the government we should, that there is a conflict between the two statutes. As already pointed out, the advantage of being a later amendment shifted to § 301 in 1925; it changed to § 305 in 1926 but still later (1928) both sections were amended by the same act, one by reenactment and the other by an added proviso.

We are concerned here with the act of 1924, as amended by acts to which we have directed attention affecting the two sections whose interpretation is now under consideration. The rule of statutory

construction applicable to such a situation is stated by the Supreme Court in Blair v. Chicago, 201 U. S. 400, 475, as follows:

"The rule was thus stated in Farrell v. State, 54 N. J. Law, 421: 'As a rule of construction, a statute amended is to be understood in the same sense exactly as if it had read from the beginning as it does amended.' People v. Circuit Judge, 37 Michigan, 287. In Conrad v. Nall, 24 Michigan, 275, a section in the chapter of the code was amended, and it was held that it was not intended to operate independently of the other provisions of the chapter, but that the whole chapter in its present form must be read as one act. The rule is correctly stated in Endlich on Statutes, section 294, as follows: 'A statute which is amended is thereafter, and as to all acts subsequently done, to be construed as if the amendment had always been there, and the amendment itself so thoroughly becomes a part of the original statute, that it must be construed, in view of the original statute, as it stands after the amendments are introduced and the matters superseded by the amendments eliminated.'"

We must apply this rule in our consideration of the interpretation of the World War Veterans Act of 1924, with its amended sections 301 and 305. We find no inconsistency between the requirement for the termination by conversion or otherwise of all yearly renewable term insurance (§ 301), and the provisions of § 305 that where such insurance had already lapsed there might be recovery where at the time a total loss is suffered by the veteran or his widow, child, children, dependent father or mother, there remained uncollectible and uncollected compensation due him for injuries or illness existing from the date of lapse until the loss. Assuming, however, that there is an inconsistency between the two sections (301 and 305) literally construed, the special provisions of § 305 must control the general one of § 301. (see authorities supra) There is another rule of statutory construction applicable in case of doubt which supports the same conclusion, that is, that the War Risk Insurance Act should be liberally construed in favor of the insured (U. S. v. Cox, 24 F. (2d) 944; U. S. v. Sligh, 31 F. (2d) 735; U. S. v. LePage, 59 F. (2d) 165; U. S. v. Law, 299 Fed. 61).

The government invokes another rule of statutory construction which is given great weight in cases of doubt, namely, that administrative interpretation may solve the doubt in favor of the administrative interpretation. The government counsel correctly states the rule that where the provisions of a statute are not open to doubt the plain words of the statute must be followed, but that "if upon the face of the statute itself, doubt as to Congressional intent is found to exist, resort to legislative history and administrative interpretation [is] permissible under such circumstances." We have expressed the view that the interpretation of the statute is clear on its face. It follows that the administrative construction is not decisive. To establish administrative practice the government relies upon a communication from the director of the U. S. Veterans' Bureau to Congress, March 10, 1926, while the proposed amendments to §§ 301 and 305, of the

World War Veterans' Act were pending in Congress, wherein he states the cost of the proposed amendments "assuming that § 305 under the present law is not effective subsequent to July 2, 1926." This communication, however, was not incorporated in the report of the committee. Indeed, the omission of such a statement in the report of the committee (H. R. 1217, 69th Congress to accompany H. R. 12175) is significant. The director of the Veterans' Bureau is said to have testified May 24, 1926, before the Senate Committee having in charge the proposed legislation amending §§ 301, 305, and in the course of such testimony the director assumed that § 305 "will not be effective under this provision for cases dying or becoming permanent total subsequent to July 2, 1927."

These statements of the Director of the Bureau in his letter and in his testimony cannot properly be considered by us in arriving at the correct construction of the Congressional enactment. They were not incorporated in the report of the committee and do not purport to state an administrative practice. The government also relies upon a letter of February 28, 1928, from the general counsel to the director reporting on the case of one Morris Cherniavsky which is marked approved F. H. T. Director, February 27, 1928, wherein it was held that "Sec. 305 cannot be applied to prevent the lapse of term insurance where there was neither death nor total permanent disability before July 7, 1927."

We are asked to assume that from that time forward the department acted upon this opinion of the General Counsel and rejected claims for compensation under § 305 which matured after July 2, 1927.

The government also relies upon the rule that where an administrative interpretation of the statute exists at the time of the amendment of the statute it will be presumed that the Congress had knowledge of the administrative interpretation, and if Congress reenacts the statute in the same terms it is presumed to have intended to adopt the administrative interpretation. Nat'l Lead Co. v. U. S., 252 U. S. 140; McCaughn v. Hershey Chocolate Co., 283 U. S. 488, 492; Old Colony R. Co. v. Comm'r., 284 U. S. 552, 557; Johnson v. Manhattan Ry. Co., 289 U. S. 479, 501.

In the application of this rule the appellate points to the amendment of 1928 to § 305 (45 Stat. 971), adding the proviso to § 305 above mentioned. It is difficult, however, to apply the rule invoked by the government to Congressional action on this bill for the opinion of the general counsel is based upon an interpretation of three sections of the statute, §§ 301, 304, and 305, and was apparently rendered while the act of 1928 was before the legislature and shortly before it was enacted. Such an opinion so rendered does not come within the rule announced by the Supreme Court in National Lead Co. v. U. S., 252 U. S. 140, which dealt with a long continued practice (24 years) with several reenactments (4) of the statute, or Johnson v. Manhattan Ry., 289 U. S. 479, which dealt with the reenactment by Congress of a section which had been construed and acted upon for several years and where the court said: "In such circumstances as this court often has pointed out, reenactment oper-

ates as implied legislative approval of the prior construction—in other words, as a reenactment of the statute as before construed."

The Circuit Court of Appeals for the Tenth Circuit in an opinion by Judge McDermott, sustained the claim of the veteran under § 305, supra, but later granted a rehearing, and, relying upon the rules of statutory construction applicable in case of doubt concerning the weight of administrative practice, it resolved that doubt in favor of the government. Skelton v. U. S., 88 F. (2d) 599, supra.

Our decision is predicated upon the ground that the statute is too clear to justify the use of such an aid, particularly where the administrative practice is not clearly established or long continued. The importance of the question involved and the disagreement we have expressed with the decision of the Tenth Circuit will no doubt require consideration of the question by the Supreme Court. We might submit the matter to that court by an appropriately framed question before rendering our decision, but we have decided in the interest of expedition to rule upon the case in the first instance.

We have not considered the effect of the Economy Act or of subsequent statutes modifying that act referred to in Lynch v. U. S., 292 U. S. 571, because of the concession of the government in open court in the course of the argument that if § 305 was not modified or repealed as to yearly renewable term insurance the appellant is entitled to judgment.

Reversed.

[Endorsed:] Opinion. Filed Mar. 28, 1938. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit

No. 8596

KATHLEEN MCCLURE, AS ADMINISTRATRIX, ETC., APPELLANT

vs.

UNITED STATES OF AMERICA, APPELLEE

Judgment

Upon Appeal from the District Court of the United States for the Eastern District of Washington, Northern Division

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Eastern District of Washington, Northern Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is reversed.

[Endorsed:] Judgment. Filed and entered March 28, 1938. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit

Certificate of Clerk, U. S. Circuit Court of Appeals for the Ninth Circuit, to Record Certified Under Rule 38 of the Revised Rules of the Supreme Court of the United States

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing sixty-three (63) pages, numbered from and including 1 to and including 62, to be a full, true, and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of Hon. Robert H. Jackson, Solicitor General of the United States, counsel for the appellee, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 19th day of May, A. D. 1938.

[SEAL] (Sgd.) PAUL P. O'BRIEN, *Clerk.*

U. S. GOVERNMENT PRINTING OFFICE, 1938

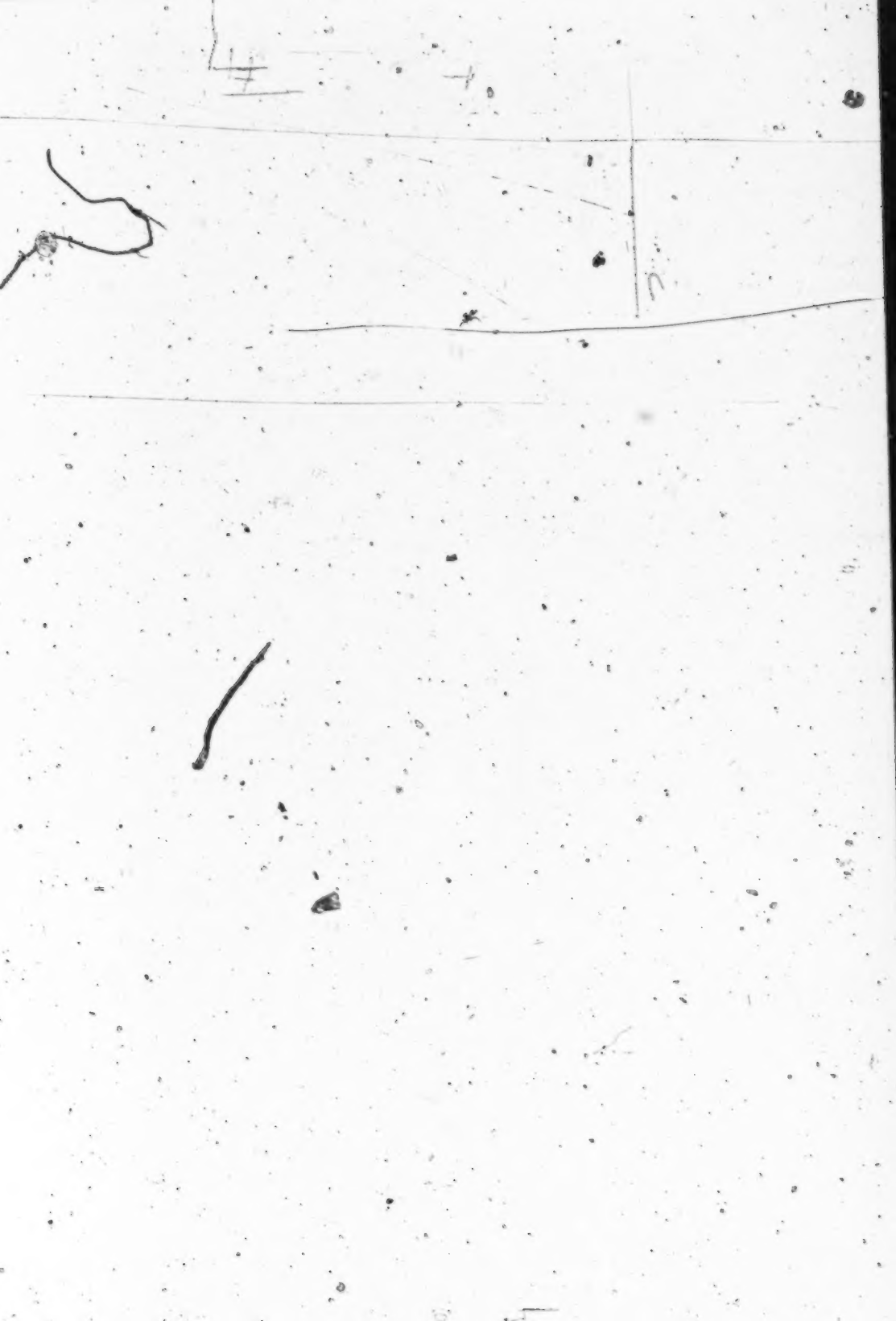
Supreme Court of the United States

Order allowing certiorari

Filed October 10, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE 1938



INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	5
Specification of errors to be urged	9
Reasons for granting the writ	10
Appendix	18

CITATIONS

Cases:

Frost v. *Wenie*, 157 U. S. 46	13
Rosencrans v. *United States*, 165 U. S. 257	13
Skelton v. *United States*, 88 F. (2d) 599	10, 13, 14, 15
Townsend v. *Little*, 109 U. S. 504	14
United States v. *Burroughs*, 289 U. S. 159	13
United States v. *Ellison*, 74 F. (2d) 864, certiorari denied, 295 U. S. 750	11
United States v. *Healey*, 160 U. S. 136	13
United States v. *Hendrickson*, 53 F. (2d) 797	11
United States v. *Jackson*, 89 F. (2d) 572, affirmed, 302 U. S. 628	12
United States v. *Knott*, 69 F. (2d) 907	11
United States v. *Madigan*, 300 U. S. 500	17
United States v. *Sellers*, 75 F. (2d) 623, certiorari denied, 295 U. S. 763	11
United States v. *Vance*, 48 F. (2d) 472	12
United States v. *Weaver*, 86 F. (2d) 372	12
Washington v. *Miller*, 235 U. S. 422	13

Statutes:

Section 404 of the War Risk Insurance Act of October 6, 1917, c. 105, sec. 2, 40 Stat. 398, 409–410	18
Section 408 of the War Risk Insurance Act of August 9, 1921, c. 57, sec. 27, 42 Stat. 147, 156–157, as amended March 4, 1923, c. 291, sec. 7, 42 Stat. 1521, 1525–1526	18
Section 301 of the World War Veterans' Act, 1924, as amended June 2, 1926, c. 449, 44 Stat. 686, 687 (U. S. C., Title 38, Sec. 512)	2
Section 305 of the World War Veterans' Act, June 7, 1924, c. 320, 43 Stat. 607, 626 (U. S. C., Title 38, Sec. 516)	4
Section 19, World War Veterans' Act (U. S. C., Title 38, Sec. 445)	11

Miscellaneous:

Page
Letter dated March 10, 1926, from the Director of the U. S. Veterans' Bureau to Hon. Royal C. Johnson, Chairman of the House Committee on World War Veterans' Legislation 14, 18
H. Rep. No. 515, 69th Cong., 1st Sess., March 11, 1926, in connection with H. R. 10240 19
H. Rep. No. 1217, 69th Cong., 1st Sess., May 14, 1926, in connection with H. R. 12175 19
Hearings before Committee on Finance, U. S. Senate, 69th Cong., 1st Sess., on H. R. 12175, May 24, 1926, p. 13 21
Letter dated June 9, 1926, from the Administrator of Veterans' Affairs to the Solicitor General 11, 26
Opinion of the General Counsel of the Veterans' Bureau dated February 22, 1923, with certification by the Administrator of Veterans' Affairs, dated September 24, 1927 ..... 8, 22

In the Supreme Court of the United States

OCTOBER TERM 1937

No. —

UNITED STATES OF AMERICA, PETITIONER

v.

KATHLEEN MCCLURE, AS ADMINISTRATRIX OF THE ESTATE OF JOHN F. MCCLURE, DECEASED, AND INDIVIDUALLY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari be issued to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit entered in the above entitled case March 28, 1938.

OPINION BELOW

The District Court rendered no opinion. The opinion of the Circuit Court of Appeals (R. 49–59) is reported in 95 F. (2d) 744.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered March 28, 1938 (R. 59). The jurisdiction of this Court is invoked under Section 240 (a)

of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the provisions of Section 305, World War Veterans' Act, 1924, are applicable to effect a revival and continuance of lapsed yearly renewable term insurance to the date of a total permanent disability occurring after July 2, 1927, despite the provisions of Section 301 of that Act, as amended, that all yearly renewable term insurance should cease on that date, with certain specified exceptions which did not include continuance of insurance under Section 305.

STATUTES INVOLVED

Section 301 of the World War Veterans' Act, 1924, as amended June 2, 1926, c. 449, 44 Stat. 686, 687 (U. S. C., Title 38, Sec. 512), provides in part as follows:

> Except as provided in the second paragraph of this section, not later than July 2, 1927, all term yearly renewable insurance held by persons who were in the military service after April 6, 1917, shall be converted, without medical examination, into such form or forms of insurance as may be prescribed by regulations and as the insured may request. Regulations shall provide for the right to convert into ordinary life, twenty-payment life, endowment maturing at age sixty-two, five-year level premium

term, and into other usual forms of insurance, * * *.

All yearly renewable term insurance shall cease on July 2, 1927, except when death or total permanent disability shall have occurred before July 2, 1927: *Provided, however,* That the director may by regulation extend the time for the continuing of yearly renewable term insurance and the conversion thereof in any case where on July 2, 1927, conversion of such yearly renewable term insurance is impracticable or impossible due to the mental condition or disappearance of the insured.

In case where an insured whose yearly renewable term insurance has matured by reason of total permanent disability is found and declared to be no longer permanently and totally disabled, and where the insured is required under regulations to renew payment of premiums on said term insurance, and where this contingency is extended beyond the period during which said yearly renewable term insurance otherwise must be converted, there shall be given such insured an additional period of two years from the date on which he is required to renew payment of premiums in which to convert said term insurance as hereinbefore provided: *Provided,* That where the time for conversion has been extended under the second paragraph of this section because of the mental condition or disappearance of the insured, there shall be allowed to the insured

an additional period of two years from the date on which he recovers from his mental disability or reappears in which to convert.

* * * * * *

Section 305 of the World War Veterans' Act, 1924 (June 7, 1924, c. 320, 43 Stat. 607, 626; U. S. C., Title 38, Sec. 516), provides:

> Where any person has heretofore allowed his insurance to lapse while suffering from a compensable disability for which compensation was not collected and dies or has died, or becomes or has become permanently and totally disabled and at the time of such death or permanent total disability was or is entitled to compensation remaining uncollected, then and in that event so much of his insurance as said uncollected compensation, computed in all cases at the rate provided by section 302 of the War Risk Insurance Act as amended December 24, 1919, would purchase if applied as premiums when due, shall not be considered as lapsed; and the United States Veterans' Bureau is hereby authorized and directed to pay to said soldier, or his beneficiaries as the case may be, the amount of said insurance less the unpaid premiums and interest thereon at 5 per centum per annum compounded annually in installments as provided by law.

Other statutes mentioned in this petition, together with an excerpt from testimony before a Congressional committee, letters and a certificate from the Administrator of Veterans' Affairs, and

an opinion of the General Counsel of the Veterans' Bureau, are contained in the Appendix, *infra*, pp. 18–30.

STATEMENT

This suit was originally brought by John F. McClure in the District Court of the United States for the Eastern District of Washington to recover total and permanent disability benefits under a contract of yearly renewable term insurance (R. 51).[1] McClure died, and the respondent, Kathleen McClure, then filed an amended complaint (R. 2–6), as administratrix of his estate and in her individual capacity, to recover both total and permanent disability and death benefits (R. 5–6), alleging, in the alternative, that he was totally and permanently disabled at the time of his discharge from the military service, January 29, 1919, before he ceased paying the premiums due on the insurance, or if not then so disabled, that he became so later, while the insurance was in force, presumably under the provisions of Section 305 of the World War Veterans' Act, 1924, *supra* (R. 3–4).

The Government, in its answer, denied all of the allegations in the amended complaint except those relating to the military service of the insured and the appointment of respondent as administratrix (R. 7–9), but at the trial of the case before the court, without a jury, pursuant to stipulation (R. 22), both parties submitted proposed findings of

[1] The record does not contain the original complaint.

fact an conclusions of law (R. 9–17, 22–28), from which it appears that there was no substantial dispute as to the facts, including the fact that the insured became totally and permanently disabled in 1929 (R. 11, 15, 23, 26), and that only issues of law were presented as to whether, in view of the provisions of Section 301, *supra*, for the termination of yearly renewable term insurance on July 2, 1927, Section 305, *supra*, effected a revival and continuance of the insurance involved herein to the date of permanent and total disability in 1929. (See plaintiff's proposed finding No. VII (R. 11, 24) and defendant's proposed finding No. VIII (R. 16, 27).)* The trial court entered findings of fact (R. 28–30) to the effect that the insured was granted a policy of war risk term insurance in the sum of $10,000, on which premiums were paid to include the month of January, 1919; that he became permanently and totally disabled December 1, 1929; that on the date he permitted his policy to lapse for failure to pay the premium then due he was suffering from a "compensable disability" for which compensation was due and uncollected; and that on the date of total and permanent disability there was due and uncollected compensation in an

*The Government also urged by its proposed finding No. VII (R. 15–16, 27) that Section 305 was repealed by the Economy Act of March 20, 1933 (U. S. C., Title 38, Sec. 717), but abandoned this contention in the Circuit Court of Appeals (R. 59).

amount sufficient to have paid all the premiums due on the policy since the date of its lapse (R. 29).

At the same time the court entered conclusions of law to the effect, *inter alia*, that respondent was not entitled to recover (R. 30), basing its decision upon the ground that the insurance was not revived and continued under Section 305, *supra*, beyond July 2, 1927, in view of the provisions of Section 301, *supra*.[1] Judgment was accordingly entered for the Government (R. 19–20), and respondent appealed, assigning error to all rulings of the trial court adverse to her (R. 36–40).

The Circuit Court of Appeals for the Ninth Circuit reversed, holding (R. 49–59): (1) That Section 305 is not limited by Section 301; that Section 305 does not extend or renew insurance, or continue it in force, but merely provides for the payment of a gratuity in the form of insurance; that there is no conflict or relation between this section and Section 301; (2) that if it were assumed that a conflict exists between Sections 301 and 305, the provisions of the latter are special, in that they provide for payment of benefits under special circumstances, and therefore must be held to control, as against the general declaration in Section 301 that yearly renewable term insurance should cease

[1] This is shown by the court's refusal (R. 18, 31) of the plaintiff's proposed finding No. VII (R. 11, 24) and the acceptance (R. 17–18, 31) of the defendant's proposed finding No. VIII (R. 12, 27).

on a certain date; (3) that an estimate of the cost to the Government of proposed amendments to Sections 301 and 305, furnished to Congressional Committees in 1926, by the Director of the Veterans' Bureau, in which he expressed an assumption to the effect that the termination of yearly renewable term insurance by Section 301 would preclude a revival and continuance of such insurance under Section 305 until total permanent disability or death occurring thereafter, should be denied significance because the estimate embodying this administrative interpretation was not incorporated in "the report of the committee", and because, in any event, it did not "purport to state an administrative practice"; (4) that amendments to Sections 301 and 305 in 1928 did not indicate Congressional adoption of the administrative interpretation, repeated at that time in an administrative opinion,* because, the court stated, that opinion was ren-

* The Government filed in the Circuit Court of Appeals a copy of an opinion rendered by the General Counsel of the Veterans' Bureau, approved by the Director in February 1928, to the effect that Section 305 was inapplicable to revive yearly renewable term insurance when the total and permanent disability or death of the insured occurred subsequent to July 2, 1927, the date fixed for the termination of such insurance by Section 301. The copy of this opinion was accompanied by a certificate of the Administrator of Veterans' Affairs, dated September 24, 1937, to the effect that the opinion was a precedent which had been applied, without modification, in administrative practice under Section 305, since it was rendered. The opinion and the Administrator's certificate appear in the Appendix, *infra*, pp. 22–26.

dered only shortly prior to the passage of the Act containing the amendments; (5) that a long continued administrative practice requiring judicial consideration was not shown,* and that, in any event, the statute involved is too clear to permit resort to administrative practice.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

(1) In holding that a right to benefits under Section 305, World War Veterans' Act, 1924, may exist in a case involving a lapsed policy of yearly renewable term insurance where the total and permanent disability of the insured occurred after July 2, 1927, the date fixed for the termination of such insurance by Section 301 of that Act, as amended.

(2) In holding that Section 305 is not limited by the provisions of Section 301 for the termination of yearly renewable term insurance on July 2, 1927.

(3) (a) In holding that the benefits provided by Section 305 were gratuities and not founded upon contracts of insurance and were not intended to be subject to the limitations applicable to such contracts contained in other sections of the World War Veterans' Act, including Section 301.

(b) If the court was correct in so holding, in failing to hold further that the District Court was without jurisdiction of respondent's suit, since Section 19 of the World War Veterans' Act authorizes suit only upon claims "under a contract of insurance."

* See footnote 4, p. 8.

(4) In misapplying well established principles of interpretation to Sections 301 and 305.

(5) In disregarding the administrative interpretation of Sections 301 and 305 and the long continued administrative practice pursuant to such interpretation.

(6) In reversing the judgment of the District Court.

REASONS FOR GRANTING THE WRIT

(1) The decision of the Circuit Court of Appeals is squarely in conflict with the decision of the Circuit Court of Appeals for the Tenth Circuit on rehearing in *Skelton* v. *United States*, 88 F. (2d) 599. There it was held that revival and continuance of yearly renewable term insurance under Section 305 was limited to cases where total and permanent disability or death occurred prior to July 2, 1927, by virtue of the provisions in Section 301 that such insurance should cease on that date. The court below, in its opinion, conceded the existence of the conflict and the importance of the question involved, stating: "The importance of the question involved and the disagreement we have expressed with the decision of the Tenth Circuit will no doubt require consideration of the question by the Supreme Court" (R. 59).

(2) That the question involved is of public importance cannot be doubted in view of a recent estimate made by the Administrator of Veterans' Affairs to the effect that "the final total cost" to

the Government, if the decision of the court below should be followed, would be "many millions of dollars." See Administrator's letter to the Solicitor General, dated June 9, 1938, Appendix, *infra*, pp. 26-30. It is reasonable to anticipate, the Administrator states, that the amount of benefits to be payable upon revivals of yearly renewable term insurance as of a period of several years after July 2, 1927, would amount to approximately three and one-half million dollars a year, since approximately the same amount was awarded upon revivals of such insurance during the year preceding that date.

(3) The decision of the court below holds, in effect, that the benefits provided by Section 305, are gratuities, not founded upon contract and not to be treated as founded upon contract. This holding is substantially in conflict with the unanimous decisions of a number of Circuit Courts of Appeals. These courts have held that Section 19 of the World War Veterans' Act (U. S. C., Title 38, Sec. 445), which confers jurisdiction upon District Courts of cases in which there has been a disagreement "as to claim *under a contract of insurance,*" embraces claims under Section 305. (*United States* v. *Ellison*, 74 F. (2d) 864, 868 (C. C. A. 4th), certiorari denied, 295 U. S. 750; *United States* v. *Sellers*, 75 F. (2d) 623 (C. C. A. 5th), certiorari denied, 295 U. S. 763; *United States* v. *Knott*, 69 F. (2d) 907 (C. C. A. 6th); *United States* v. *Hendrickson*, 53 F. (2d) 797 (C. C. A. 10th); *United States*

v. *Vance*, 48 F. (2d) 472 (C. C. A. 8th).) There would seem to be no reason why the benefits conferred by Section 305 should not be regarded as derived from an insurance contract for the purposes of the provisions in Section 301, as well as for the purposes of Section 19. The decision of the court below would seem also to be in conflict with *United States* v. *Weaver*, 86 F. (2d) 372 (C. C. A. 4th), in which it was held that the rights conferred by Section 305 were not gratuities, but contractual rights, and hence were protected by the Fifth Amendment from impairment. Cf. *United States* v. *Jackson*, 89 F. (2d) 572 (C. C. A. 4th), affirmed by this Court, 302 U. S. 628. If, however, the court below is correct in the view that the benefits provided by Section 305 are gratuitous, not founded upon contract and not to be so treated, with the result that the provisions of Section 301 relating to contracts have no application, then it would seem to follow that Section 19, World War Veterans' Act, authorizing suit only upon claims "under a contract of insurance" is likewise inapplicable for precisely the same reasons, and the court below should have held that the District Court was without jurisdiction of the instant suit.

4. The decision of the Circuit Court of Appeals is in conflict with well established principles of statutory construction.

(a) The effect of the decision is to treat the revival provisions in Section 305 and its predecessor,

Section 408 of the War Risk Insurance Act (Appendix, *infra*, pp. 18–19), as constituting an implied amendment of the limitation provisions of Section 301 and its predecessor, Section 404, War Risk Insurance Act (Appendix, *infra*, p. 18), contrary to the well settled rule of statutory construction that such amendments are not favored, and that an intention to amend will not be imputed unless the statutes involved admit of no other construction. *Rosencrans* v. *United States*, 165 U. S. 257, 262; *Frost* v. *Wenie*, 157 U. S. 46, 58; *Washington* v. *Miller*, 235 U. S. 422, 428; *United States* v. *Healey*, 160 U. S. 136, 147; *United States* v. *Burroughs*, 289 U. S. 159, 164. This is true because a time limitation had already been placed upon yearly renewable term insurance when the provisions for revival and extension of lapsed insurance were first enacted and made prospectively effective with respect to the death or total and permanent disability of the insured. (See Section 408 of the War Risk Insurance Act, as amended, Appendix, *infra*, pp. 18–19; *Skelton* v. *United States*, *supra*.)

(b). The decision treats the revival provision of Section 305 as a special statutory provision controlling what the court considered the general limitation provision of Section 301 (R. 55, 57). It is submitted that the correct view is just the reverse; that Section 305 and its predecessor, Section 408, War Risk Insurance Act, are general provisions, in that they relate to the revival of all forms of insurance,

and must therefore yield to the provisions in Section 301 and its predecessor, Section 404, War Risk Insurance Act, for the termination of insurance, which are plainly special in nature since they relate only to yearly renewable term insurance. *Townsend* v. *Little*, 109 U. S. 504, 512; *Skelton* v. *United States*, *supra*, pp. 603-604.

(c) The decision ignores the fact that the administrative interpretation that yearly renewable term insurance could not be revived under Section 305 after the date for its termination, as fixed in Section 301, was clearly disclosed to Congressional committees by the Director of the Veterans' Bureau in 1926,* and was reiterated in an opinion approved by the Director in 1928 (Appendix, *infra*, pp. 22–26), and also the fact that this interpretation has been followed for ten years in administering the Act.† Despite these facts Congress in 1926, subsequent to the first expression of the administrative interpretation, in extending the time limitation upon term insurance from July 2, 1926, to July 2, 1927, provided exceptions to the limitation without reference to the revival and continuance of insur-

---

*Contrary to the apparent assumption in the opinion (R. 58), a letter from the Director of the Veterans' Bureau disclosing the administrative interpretation was brought to the attention of Congress itself by being attached to Committee Reports. (Appendix, *infra*, pp. 19-20.)

†See certificate of the Administrator of Veterans' Affairs, filed in the Circuit Court of Appeals. (Appendix, *infra*, p. 22.)

ance under Section 305 (see Sec. 301, as amended, *supra*), and thereafter, without indicating disapproval of the administrative interpretation, Congress amended Sections 301 and 305 in 1928, shortly after the release of the opinion mentioned above, and in 1930 and 1932 amended Section 301. (See U. S. C., Title 38, Secs. 512, 516.) We submit that, as stated in the opinion on rehearing in the *Skelton* case, *supra*, p. 604, this silence must be regarded as acquiescence.

3. The court below suggests, in effect (R. 54), that any time limitation upon the application of Section 305 would be inconsistent with the purpose of that section. We submit that this view ignores the effect of the passage of time upon the practical considerations giving rise to the enactment of this legislation. Undoubtedly the purpose was to restore insurance, presumably lost through no fault of the insured because of delay on the part of the Government in paying compensation for service-incurred disabilities, upon the further presumption that such compensation, if paid, would have been used to continue the insurance or to reinstate it. But it is reasonable to assume that when the provisions for revival were first enacted and made prospectively effective (Appendix, *infra*, pp. 18–19), Congress recognized that as the period of service became more remote the cases in which compensation was unpaid because of delay on the part of the Government in acting upon claims, would progres-

sively decrease to the point of disappearance and that the opposite presumption would arise that compensation was unpaid only because of delay on the part of the veteran in claiming it or in supporting the claim by satisfactory evidence, and consequently that Congress intended that the time limit then fixed upon term insurance should preclude a subsequent revival of such insurance under Section 305.

The fact to which the court alludes (R. 54), that no such limitation as that contained in Section 301 with reference to yearly renewable term insurance was placed upon the revival of converted insurance, provides no reason for concluding that Congress intended the former to be without time limit upon its revival and continuance. The different status of the holders of the two types of insurance results appropriately from differences in their terms and conditions. Term insurance had a lower premium rate but was temporary; converted insurance has a higher premium rate but is permanent. The fact that after the expiration of the temporary form of insurance it is not subject to revival, is of no more significance than is the fact that the amount of insurance revived by a given sum of compensation varies with the premium rate, which in turn is dependent upon whether the insurance is yearly renewable term, ordinary life, or some other type of converted insurance. The higher premium rate on converted

insurance, together with the fact that the statute originally provided for the revival of insurance only in cases where the uncollected compensation would equal or exceed the entire sum of the premiums unpaid (Appendix, *infra*, pp. 18–19) permitted revival of comparatively few of such policies and of a comparatively small amount of insurance thereunder.*

For the reasons stated it is respectfully submitted that the petition for a writ of certiorari should be granted.

ROBERT H. JACKSON,
Solicitor General.

JUNE 1938.

---

*The difference in the premium rates between term and converted insurance accounted for the controversy involved in *United States* v. *Madigan*, 300 U. S. 500, 503.

APPENDIX

The first authority to grant war risk insurance is contained in the Act of October 6, 1917, c. 105, Sec. 2, 40 Stat. 398, 409–410, amending the War Risk Insurance Act by adding the following section, among others:

> SEC. 404. That during the period of war and thereafter until converted the insurance shall be term insurance for successive terms of one year each. Not later than five years after the date of the termination of the war as declared by proclamation of the President of the United States, the term insurance shall be converted, without medical examination, into such form or forms of insurance as may be prescribed by regulations and as the insured may request. Regulations shall provide for the right to convert into ordinary life, twenty payment life, endowment maturing at age sixty-two, and into other usual forms of insurance and shall prescribe the time and method of payment of the premiums thereon. * * *

Section 408 was added to the War Risk Insurance Act by the Act of August 9, 1921, c. 57, Sec. 27, 42 Stat. 147, 156–157, and was amended by the Act of March 4, 1923, c. 291, Sec. 7, 42 Stat. 1521, 1525–1526, to provide, in part:

> SEC. 408. * * * That where any soldier has heretofore allowed his insurance to lapse, while suffering from wounds or disease suffered or contracted in line of service, and was at the time he allowed his [said policy] *insurance* to lapse entitled to compen-

sation on account thereof in a sum equal to or in excess of the amount due from him in premiums on his said insurance, and [has since died] *dies or has died* from said wounds or disease, *or becomes or has become permanently and totally disabled by reason thereof*, without collecting [or making claim for] said compensation [or being allowed to reinstate his said policy on account of his physical condition], *and at the time of such death or permanent total disability had or has sufficient uncollected compensation to pay all unpaid premiums*, then and in that event said policy shall not be considered as lapsed, and the *United States* Veterans' Bureau is hereby authorized and directed to pay to the *said soldier or his* beneficiaries [of said soldier] under said policy the amount of said insurance, less the premiums and interest thereon at 5 per centum per annum compounded annually in installments as provided by law: * * *. [Italics represent words added by the amendatory Act. Words in the prior Act, omitted by amendment, are enclosed in brackets.]

Copies of the following letter from the Director of the United States Veterans' Bureau to the Chairman of the House Committee on World War Veterans' Legislation were attached to the Committee Report (H. Rept. No. 515, 69th Cong., 1st Sess.), made on March 11, 1926, in connection with a bill (H. R. 10240) to amend Sections 301 and 305 of the World War Veterans' Act, 1924, and to the Report of the same Committee (H. Rep. No. 1217, 69th Cong., 1st Sess.), made on May 14, 1926, in connection with a substitute bill (H. R. 12175):

UNITED STATES VETERANS' BUREAU,
Washington, March 10, 1926.

Hon. ROYAL C. JOHNSON,
Chairman House Committee on World War Veterans' Legislation, House of Representatives, Washington, D. C.

MY DEAR MR. JOHNSON:

* * * * *

Section 15 amends section 301 to provide for the continuation of term insurance for a period of three years. The chief effect of such a continuation would be the increased cost due to the continued application of section 305, assuming that section 305 under the present law is not effective subsequent to July 2, 1926. Based upon current experience, the amount of term insurance which might be brought in under section 305 by the continuation of the term-insurance provisions for another three years is estimated at $105,039,900. Payment on this insurance would continue over approximately 20 years, accumulating each year as follows: First year, $5,252,000; Second year, $10,504,000; Third year, $15,756,000.

Section 18 amends section 305 by limiting the class of beneficiaries. The above estimate of costs due to the continuation of term insurance through the amendment of section 301 can, therefore, be discounted by 45 per cent, with the resultant value of insurance which might be brought in totaling $57,771,945. Through this limitation there results, therefore, a material saving each year as follows: First year, $2,362,000; Second year, $4,724,000; Third year, $7,086,000.

Net cost of extension of term insurance:

First year, $2,890,000; Second year, $5,780,000; Third year, $8,670,000.

* * * * *

FRANK T. HINES, *Director.*

When H. R. 12175 was before the Senate Committee on Finance, the Director of the Veterans' Bureau testified before that Committee on May 24, 1926, as follows:

> Section 17 amends Section 304 and provides for the extension of term insurance for one year. The chief effect of the continuation of term insurance will be the cost of the cases revived under Section 305, *assuming that Section 305 under the present law is not effective for cases dying or becoming permanent total subsequent to July 2, 1926, and further assuming that the application of Section 305 will not be effective under this provision for cases dying or becoming permanent total subsequent to July 2, 1927.* Based upon current experience the term insurance which might be brought in under Section 305 by continuation of term insurance for one year will cost annually, at the rate of $57.50 per month for $10,000, approximately $1,839,540; however Section 18 amends Section 305 by limiting the class of beneficiaries for insurance revived under Section 305 to the widow, child, or parent. It is, therefore, believed that the above estimate of cost due to the continuation of term insurance can be discounted by 45 percent, with the resultant annual saving of approximately $827,780. The net cost of continuation of term insurance for a period of one year would, therefore, be approximately $1,011,750. (Italics supplied.)
>
> (Hearings before the Senate Committee on Finance on H. R. 12175, May 24, 1926. p. 13.)

The following certificate of the Administrator of Veterans' Affairs, dated September 24, 1937, and a copy of the opinion of the General Counsel of the Veterans' Bureau, approved by the Director of the Bureau on February 27, 1928, were filed with the Clerk of the Circuit Court of Appeals for the Ninth Circuit in the instant case:

UNITED STATES OF AMERICA,
VETERANS' ADMINISTRATION,
September 24, 1937.

I hereby certify that the annexed photostats are those of an opinion rendered by the former General Counsel of the Veterans' Bureau on February 23, 1928, addressed to me as Director of said Bureau, to constitute a precedent for the administrative construction of Section 305 of the World War Veterans' Act, 1924, as amended. I further certify that said opinion was approved by me as Director on February 27, 1928, and was followed administratively by the Veterans' Bureau, has not been modified, and is still applied as the administrative practice of the Veterans' Administration.

In witness whereof, I have hereunto set my hand, and caused the seal of the Veterans' Administration to be affixed on the day and year first above written.

[SEAL] (Signed) FRANK T. HINES,
Administrator of Veterans' Affairs.

UNITED STATES VETERANS' BUREAU,
Date: *February 23, 1928.*
LL–14

Memorandum from: The General Counsel.
To: The Director.
Subject: Cherniavsky, Morris, XC–400,962.

The Adjudication Service has presented this case for an opinion and as the establish-

ment of a precedent is involved the opinion is referred to you for your approval.

The Adjudication Service has prepared the following summary of facts:

"This man executed an application for insurance while in service, but allowed this insurance to lapse for non-payment of the premium due September 1, 1919. The man had been discharged on August 22, 1919, and, following his discharge, he executed an application for compensation, on which application he has been rated as being disabled in various degrees until the date of his death on July 20, 1927. At the time of the lapse of the insurance his disability was of a compensable degree.

"Following his death, it was determined that while he had been rated less than 10 per cent disabled from August 9, 1924, as an actual fact he was temporarily partially 62 per cent disabled from that date to November 3, 1924, less than 10 per cent from that date to July 1, 1926, and entitled to the statutory award for arrested tuberculosis in the amount of $50 monthly from July 2, 1926, to July 20, 1927.

"You will note that this claimant was not permanently and totally disabled at any time prior to his death, which occurred on July 20, 1927, and therefore the question is herewith presented to your Service whether a claimant who dies subsequent to July 2, 1927, and who was not permanently and totally disabled at any time prior thereto, comes within the provisions of Section 305 of the World War Veterans' Act as amended, if there is compensation due and unpaid for a period prior to the date of his death."

The question is whether Section 305 of the World War Veterans' Act, as amended, has application to term insurance where there has been neither permanent and total disability nor death at any time prior to July 2, 1927, the ending date for term insurance.

Section 304, World War Veterans' Act (last proviso), is to the effect that no yearly renewable term insurance shall be reinstated after July 2, 1927. The second paragraph of Section 301, World War Veterans' Act, as amended, provides in substance that all yearly renewable term insurance shall cease on July 2, 1927, except where death or total permanent disability shall have occurred before that date with the proviso that the Director may extend the time for continuing yearly renewable term insurance where on July 2, 1927, conversion is impracticable or impossible by reason of mental condition or disappearance of the insured.

Section 305 of the World War Veterans' Act, as amended, of course, has application both to term and converted insurance and is to the effect that where any person has heretofore allowed his insurance to lapse, or has canceled or reduced any or all of the insurance, and where the other requirements of Section 305 have been met such insurance shall not be regarded as having lapsed.

It may be noted generally that government insurance, both term and converted, may be discontinued (a) either by the government or (b) by the insured. The insured may end his insurance in whole or in part by some affirmative act such as cancellation or reduction or by failure to act, as where the insurance lapses for failure to pay premiums. The provisions of Section 305, World War Veterans' Act, and for that mat-

ter the provisions of Section 408 of the War Risk Insurance Act deal with cases where the insured has discontinued his insurance, whereas the last proviso of Section 304, World War Veterans' Act, and the second paragraph of Section 301, World War Veterans' Act, deal with the discontinuance of the insurance through some act of the government.

In the present case the term insurance lapsed prior to July 2, 1926, through failure of the insured to pay premiums, and at the time of the lapse of the insurance his disability was of a compensable degree. Further, there was uncollected compensation at the date of lapse. Therefore, it would appear normally that the first proviso of Section 305 has been met. The second requirement of Section 305 is that there should have been uncollected compensation due at the maturity of the insurance, either through permanent and total disability or through death. In the present case the death was after July 2, 1927, and there was no permanent and total disability prior to July 2, 1927. Therefore, assuming that there was uncollected compensation at the date of lapse so that the first requirement of Section 305 has been met, if an attempt be made to apply that Section in the present case the insurance would be prevented from lapsing up to July 2, 1927, at which time the term insurance by act of the Government was ended. Clearly in this case the term insurance did not mature before July 2, 1927, so that it cannot be said that the case would be covered by this language in paragraph 2 of Section 301 "except where death or permanent total disability shall have occurred before July 2, 1927." Neither, on the assumption that Section 305 might be applied to

carry the term insurance to July 2, 1927, can it be said that there are grounds for continuing the term insurance after the dead line because there is nothing to show that conversion was impracticable or impossible because of the mental condition or disappearance of the insured.

Having in mind the fact that from the very beginning of war risk legislation it has been clearly understood that the yearly renewable term insurance was temporary in its nature and subject to ultimate termination by the government; and having in mind that from a relatively early date Congress has seen fit to declare that term insurance could not be carried beyond a specified date, which date has been extended from time to time; and having in mind that the final extension expired under the present act, July 2, 1927, it is the opinion of this Service that Section 305 cannot be applied to prevent the lapse of term insurance where there was neither death nor total permanent disability before July 2, 1927.

(Signed) WILLIAM WOLFF SMITH.

Director's Office, Feb. 27, 1928.

Approved: F. T. H., *Director*.

Letter from the Administrator of Veterans' Affairs to the Solicitor General:

VETERANS' ADMINISTRATION,
Washington, June 9, 1938.

Office of The Administrator of Veterans' Affairs.

The Honorable The SOLICITOR GENERAL,
Department of Justice, Washington, D. C.

MY DEAR SOLICITOR GENERAL: Further reference is made to your request of May 16, 1938, that I furnish a letter to certain an estimate of the probable expense to the

United States Government if the decision of the Circuit Court of Appeals of the 9th Circuit, March 28, 1938, in the case of Kathleen McClure vs. the United States should be followed.

As preliminary to certain statistics hereinafter discussed, I would state that the Veterans' Administration as well as the Veterans' Bureau has construed Section 305 of the World War Veterans Act in connection with Section 301 of the same Act so as to give effect to the time limitation in the latter Section; that is to say, it has been held that Section 305, World War Veterans Act, would not apply where the date of death or of permanent and total disability was subsequent to the dead line for term insurance under Section 301. The Circuit Court of Appeals, 10th Circuit, Skelton vs. United States, 88 Fed. (2) 599, March 2, 1937, held in accordance with this practice but recently the Circuit Court of Appeals in the 9th Circuit in the McClure case cited by you held to the contrary.

It is noted from the opinion of the Court in the McClure case that the Government relied on the Administrative practice and brought to the attention of the Court the opinion of a former General Counsel in the case of Morris Cherniavsky, XC-400,962, February 23, 1928 (50 G. C. 413). The Court evidently thought that this was an isolated case and apparently was not aware of the fact that it was a precedent forming opinion on which an Administrative policy has rested of more than ten years' duration. I quote the following from the opinion in the Cherniavsky case which was approved as a precedent February 27, 1928:[1]

* * * * *

[1] The quotation is omitted to avoid repetition.

Although the Meyrowitz opinion did not cite the Cherniavsky case by name or number, it is consistent therewith. The question was again considered on January 28, 1930, in the case of David Biggerstaff, C-456,804 (General Correspondence 231). In the Biggerstaff case, the onset of the permanent and total disability was November 28, 1928, and the claim was disallowed with a specific reference to the Cherniavsky precedent.

Covering the interval from February 1928 to January 1930 this question was considered specifically on three occasions, but this circumstance would not justify the conclusion that these three individual cases represented all the claims in which this Administrative practice was applied. It is not possible to list all of the cases involving Section 305 which were disallowed under this practice, and while there are not available statistics to show precisely the number of rejections, a conservative estimate would put the total number of such disallowed claims as at least one thousand. In addition, there have been thousands of cases in which no claim for insurance was ever filed because of the generally understood rule that Section 305, World War Veterans' Act, 1924, as amended, would not apply when death or permanent and total disability was after the dead line for term insurance.

I would suggest that since the amendment to the World War Veterans' Act approved June 2, 1926 (Public, No. 325, 69th Congress), amended Section 301 of World War Veterans' Act so as to permit the continuance of term insurance from July 1926 to July 1927, undoubtedly such an extension would have covered a large number of cases under Section 305 and that hence any estimate in connection with this one year exten-

sion would be of value in considering the possible cost to the United States Government should the theory of the McClure case be upheld. In 1926 there were pending a number of bills involving various propositions as to the extension of term insurance and while the Act of June 2, 1926, to-wit, Public, 325, 69th Congress, was a Senate bill, S. 3097, there was a similar bill in the House, to-wit, H. R. 12175, also providing for a year's extension for term insurance. I transmit at this time a copy of a part of a statistical study which was made in connection with the House bill as to the estimated cost of extending term insurance for one year. Taking into consideration that of the cases affected, the principal item of cost was by reason of claims under Section 305, you will note that the estimated cost of H. R. 12175 was given as $1,011,750 for the first year and an equal amount for the second year.

Viewing the situation now in retrospect I have caused a study to be made of the actual number of cases involving yearly renewable term insurance and the cost where insurance was revived under Section 305 of the World War Veterans Act and where the permanent and total disability or death occurred in the interval of the year extension from July 2, 1926, to the corresponding date in 1927. A copy of this study is also transmitted and from it you will note that 718 awards under Section 305 have been made to date in those cases where the permanent and total disability or death occurred within the year extension with the net commuted value of the revived insurance as $3,545,777. In other words the cost to the United States Government to date in the revival of term insurance under Section 305 for the one year extension

has been slightly in excess of three and one-half million dollars.

If, therefore, the date of permanent and total disability or death is not limited to July 2, 1927, in the Section 305 cases it would be fair to assume that approximately the same number of cases might be expected each year for a period of several years from 1927 on—a total in the neighborhood of 700 annually with an amount of insurance thus revived of approximately three and one-half million dollars per year. Due to the fact that adjustments in rates of compensation tend to become less frequent as the period involved becomes more remote and that the number of cases where service connection is first established tends to become smaller each year a gradual decrease in the number of cases may occur in the future. The net amount of insurance paid per case will also tend to grow somewhat less because of the deductions of back premiums and interest over a longer period of time than was involved in the earlier cases. Even allowing for these factors, however, it must be concluded that a substantial number of cases will be affected each year prospectively, over a long period of time, and that the final total cost will aggregate many millions of dollars.

Sincerely,

(s) Frank T. Hines,
FRANK T. HINES,
Administrator.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	5
Specification of errors to be urged	9
Summary of Argument	10
Argument:	
I. If the court below was correct in holding that the benefit provided by Section 305 is a gratuity not subject to the provisions of Section 301, relating to insurance contracts, it must follow that the trial court lacked jurisdiction under Section 19, authorizing suits on such contracts	14
II. Section 301 prevents the continuance of the yearly renewable term insurance here involved beyond July 2, 1927, and hence prevents the continuance of such insurance under Section 305 to December 1, 1929, when the insured became totally permanently disabled	18
Conclusion	42
Appendix	43

CITATIONS

Cases:	
Brown v. *Piper*, 91 U. S. 37	39
Cahn v. *United States*, 152 U. S. 211	39
Copper Queen Mining Co. v. *Arizona Board*, 206 U. S. 474	38
DeBeers v. *Safe Deposit Co.*, 233 U. S. 24	39
Frost v. *Wenie*, 157 U. S. 46	33
Helvering v. *Bliss*, 293 U. S. 44	38, 39
Ibanez v. *Hongkong Banking Corp.*, 246 U. S. 621	34
Johnson v. *Manhattan Ry. Co.*, 289 U. S. 479	38
Jones v. *United States*, 137 U. S. 202	39
Komada v. *United States*, 215 U. S. 392	38
Lang v. *Commissioner*, 304 U. S. 264	38, 39
Lynch v. *United States*, 292 U. S. 571	28
Missouri v. *Ross*, 299 U. S. 72, 76	41
National Lead Co. v. *United States*, 252 U. S. 140	38
New Haven R. R. v. *Interstate Com. Com.*, 200 U. S. 361	38
New York Indians v. *United States*, 170 U. S. 1	39
Rosencrans v. *United States*, 165 U. S. 257	33

110453—38——1

Cases—Continued. Page

Millwaukie v. United States, 380 U. S. 221 17
Stalker v. United States, 72 F. (2d) 149 ..... 30, 41
Taft v. Commissioner, 304 U. S. 351 ..... 28, 30
The Mayville, 11 Wall. 411 30
Thornton v. United States, 271 U. S. 414 30
Townsend v. Little, 109 U. S. 504 41
United States v. Burroughs, 289 U. S. 159 34
United States v. Corbish, 296 U. S. 435 16
United States v. Dillon, 74 F. (2d) 864, certiorari denied, 295 U. S. 760 ..... 10, 16
United States v. G. Falk & Brother, 284 U. S. 143 33
United States v. Griffin, 303 U. S. 226 19
United States v. Hartley, 180 U. S. 186 33
United States v. Hendrickson, 88 F. (2d) 797 ..... 16, 20
United States v. Hernandez y Compania, 300 U. S. 887 36
United States v. Jenkins, 80 F. (2d) 573, affirmed, 303 U. S. 672 17
United States v. Kent, 69 F. (2d) 307 16
United States v. Madigan, 300 U. S. 500 ..... 12, 22, 25, 34, 39, 40
United States v. Munday, 223 U. S. 175 34
United States v. Sellers, 75 F. (2d) 333, certiorari denied, 295 U. S. 762 ..... 11, 16
United States v. Vance, 48 F. (2d) 472 16
United States v. Weaver, 36 F. (2d) 372 16
Washington v. Miller, 235 U. S. 422 33
Zellerbach Co. v. Helvering, 293 U. S. 172 ..... 38, 39

Statutes:

Section 322 (2), War Risk Insurance Act, as amended, c. 105, 40 Stat. 409; c. 16, 41 Stat. 371, 378 28
Section 404 of the War Risk Insurance Act of October 6, 1917, c. 105, sec. 2, 40 Stat. 398, 409–410; as amended by the Act of August 9, 1921, c. 57, sec. 24, 42 Stat. 147, 155 43–44
Section 406 of the War Risk Insurance Act of August 9, 1921, c. 57, sec. 27, 42 Stat. 147, 155, as amended March 4, 1923, c. 301, sec. 7, 42 Stat. 1521, 1525–1526 44–45
Section 5, World War Veterans' Act, U. S. C., Title 38, Sec. 426 17
Section 19, World War Veterans' Act, U. S. C., Title 38, Sec. 445 16
Section 200, World War Veterans' Act, U. S. C., Title 38, Sec. 471 22
Section 301 World War Veterans' Act, 1924, as amended June 2, 1926, c. 449, 44 Stat. 686, 687 (U. S. C., Title 38, Sec. 512) 2, 48–49, 51
Section 304, World War Veterans' Act, 1924, as amended (U. S. C., Title 38, Sec. 515) 53–54

Statutes—Continued. Page

Section 305, World War Veterans' Act, 1924, as amended, c. 182, 43 Stat. 607, 629 (U. S. C., Title 38, Sec. 516)... 4, 49–50
Section 300 World War Veterans' Act of June 7, 1924, c. 320, 43 Stat. 607, 629–630... 47
Section 301, World War Veterans' Act of June 7, 1924, c. 320, 43 Stat. 607, 629–630... 47
Act of July 2, 1921, c. 40, 42 Stat. 105... 51
Act of March 4, 1925, c. 553, sec. 12, 43 Stat. 1302, 1309... 51
Act of July 2, 1926, c. 723, sec. 16, 44 Stat. 790, 799... 52
Act of May 29, 1928, c. 875, secs. 14, 17, 45 Stat. 964, 968, 971... 52
Act of July 3, 1930, c. 849, sec. 22, 46 Stat. 991, 1001... 52
Act of June 24, 1932, c. 276, 47 Stat. 334... 53
Act of June 1, 1937, c. 285, 50 Stat. 241... 53

Miscellaneous:
Annual Report of the Director, U. S. V. B., 1923, p. 659... 23
Bulletin No. 1 (R. & P., U. S. V. B. 1930, Part II, pp. 1233–1235) of October 15, 1917... 45–47
Letter dated March 10, 1926 from the Director of the U. S. Veterans Bureau to Hon. Royal C. Johnson, Chairman of the House Committee on World War Veterans' Legislation... 55–56
H. Rep. No. 515, 69th Cong., 1st Sess., March 11, 1926, in connection with H. R. 10240... 54
H. Rep. No. 1217, 69th Cong., 1st Sess., May 14, 1926, in connection with H. R. 12175... 55
Hearings before Committee on Finance, U. S. Senate, 69th Cong., 1st Sess., on H. R. 12175, May 24, 1926, p. 13... 56
Opinion of the General Counsel of the Veterans' Bureau dated February 28, 1928, with certification by the Administrator of Veterans Affairs, dated September 24, 1937... 8, 57–62
Letter dated June 9, 1938, from the Administrator of Veterans Affairs to the Solicitor General... 62
Letter dated November 14, 1938, from the Administrator of Veterans Affairs to the Solicitor General... 62–65

In the Supreme Court of the United States

OCTOBER TERM, 1938

No. 154

UNITED STATES OF AMERICA, PETITIONER

v.

KATHLEEN McCLURE, AS ADMINISTRATRIX OF THE ESTATE OF JOHN F. McCLURE, DECEASED, AND INDIVIDUALLY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The District Court rendered no opinion. The opinion of the Circuit Court of Appeals (R. 49–59) is reported in 95 F. (2d) 744.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered March 28, 1938. (R. 59.) The petition for writ of certiorari was filed June 28, 1938, and granted October 10, 1938. (R. 61.) The

jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the provisions of Section 305, World War Veterans' Act, 1924, are applicable to effect a revival and continuance of lapsed yearly renewable term insurance to the date of a total permanent disability occurring after July 2, 1927, despite the provisions of Section 301 of that Act, as amended, that all yearly renewable term insurance should cease on that date, with certain specified exceptions which did not include continuance of insurance under Section 305.

STATUTES INVOLVED

Section 301 of the World War Veterans' Act, 1924, as amended, as contained in U. S. C., Title 38, Sec. 512, provides in part as follows (see also U. S. C., Supp. III, Title 38, Sec. 512):

> Except as provided in the second paragraph of this section, not later than July 2, 1927, all term yearly renewable insurance held by persons who were in the military service after April 6, 1917, shall be converted, without medical examination, into such form or forms of insurance as may be prescribed by regulations and as the insured may request. Regulations shall provide for the right to convert into ordinary life, twenty-payment life, endowment maturing

at age sixty-two, five-year level premium term, and into other usual forms of insurance, * * *.

All yearly renewable term insurance shall cease on July 2, 1927, except when death or total permanent disability shall have occurred before July 2, 1927: *Provided, however*, That the director may by regulation extend the time for the continuing of yearly renewable term insurance and the conversion thereof in any case where on July 2, 1927, conversion of such yearly renewable term insurance is impracticable or impossible due to the mental condition or disappearance of the insured.

In case where an insured whose yearly renewable term insurance has matured by reason of total permanent disability is found and declared to be no longer permanently and totally disabled, and where the insured is required under regulations to renew payment of premiums on said term insurance, and where this contingency is extended beyond the period during which said yearly renewable term insurance otherwise must be converted, there shall be given such insured an additional period of two years from the date on which he is required to renew payment of premiums in which to reinstate or convert said term insurance as hereinbefore provided: *Provided*, That where the time for conversion has been extended under the second paragraph of this section because of the mental condition or disappearance of the in-

sured, there shall be allowed to the insured an additional period of two years from the date on which he recovers from his mental disability or reappears in which to convert.

* * * * * * * * This section, as amended, shall be deemed to be in effect as of June 7, 1924.

Section 305 of the World War Veterans' Act, 1924, as amended, as contained in U. S. C., Title 38, Sec. 516, provides in part:

> Where any person has, prior to June 7, 1924, allowed his insurance to lapse, or has canceled or reduced all or any part of such insurance, while suffering from a compensable disability for which compensation was not collected and dies or has died, or becomes or has become permanently and totally disabled and at the time of such death or permanent total disability was or is entitled to compensation remaining uncollected, then and in that event so much of his insurance as said uncollected compensation, computed in all cases at the rate provided by section 302 of the War Risk Insurance Act as amended December 24, 1919, chapter 16, Forty-first Statutes, page 371, would purchase if applied as premiums when due, shall not be considered as lapsed, canceled, or reduced; and the Veterans' Administration is hereby authorized and directed to pay to said soldier, or his beneficiaries, as the case may be, the amount of said insurance less the unpaid premiums and interest thereon at 5 per

centum per annum compounded annually in installments as provided by law: * * *.

Other pertinent matter appears in the Appendix, *infra*, pp. 43–65.

STATEMENT

This suit was originally brought by John F. McClure in the District Court of the United States for the Eastern District of Washington, to recover total permanent disability benefits under a contract of war risk (yearly renewable) term insurance. (R. 51.)[1] McClure died, and the respondent, Kathleen McClure, then filed an amended complaint (R. 2–6), as administratrix of his estate and in her individual capacity, to recover both total permanent disability and death benefits (R. 5–6), alleging, in the alternative, that he was totally and permanently disabled at the time of his discharge from the military service, January 29, 1919, before he ceased paying the premiums due on the insurance, or if not then so disabled, that he became so later, while the insurance was in force, presumably under the provisions of Section 305 of the World War Veterans' Act, 1924, *supra* (R. 3–4).

The Government, in its answer, denied all of the allegations in the amended complaint except those relating to the military service of the insured and the appointment of respondent as administratrix (R. 7–9), but at the trial of the case before the court, without a jury, pursuant to stipulation (R.

[1] The record does not contain the original complaint.

28), both parties submitted proposed findings of fact and conclusions of law (R. 9–17, 22–28), from which it appears that there was no substantial dispute as to the facts, including the fact that the insured became totally and permanently disabled in 1929 (R. 14, 15, 28, 26), and that only issues of law were presented including the issue as to whether, in view of the provisions of Section 301, *supra*, for the termination of yearly renewable term insurance on July 2, 1927, Section 305, *supra*, effected a revival and continuance of the insurance involved herein to the date of total permanent disability in 1929. (See plaintiff's proposed finding No. VII (R. 11, 24) and defendant's proposed finding No. VIII (R. 16, 27.)*

The trial court entered findings of fact (R. 28–30) to the effect that the insured was granted a policy of war risk term insurance in the sum of $10,000, on which premiums were paid to include the month of January, 1919; that he became totally and permanently disabled December 1, 1929; that on the date he permitted his policy to lapse for failure to pay the premium then due he was suffering from a "compensable disability" for which compensation was due and uncollected; and that on the date of total permanent disability there was due

* The Government also urged by its proposed finding No. VII (R. 15–16, 27) that Section 305 was repealed by the Economy Act of March 20, 1933 (U. S. C., Title 38, Sec. 717), but abandoned this contention in the Circuit Court of Appeals (R. 59).

and uncollected compensation in an amount sufficient to have paid all the premiums due on the policy since the date of its lapse (R. 29).

At the same time the court entered conclusions of law to the effect, *inter alia*, that respondent was not entitled to recover (R. 30), basing its decision upon the ground that the insurance was not revived and continued under Section 305, *supra*, beyond July 2, 1927, in view of the provisions of Section 301, *supra*.* Judgment was accordingly entered for the Government (R. 19–20), and respondent appealed, assigning error to all rulings of the trial court adverse to her (R. 36–40).

The Circuit Court of Appeals for the Ninth Circuit reversed, holding (R. 49–59) that Section 305 is not limited by Section 301, upon the grounds (1) that there is no conflict or relation between the two sections; that Section 305 does not extend or renew insurance, or continue it in force, but merely provides for the payment of a gratuity in the form of insurance; (2) that if it were assumed that a conflict exists between Sections 301 and 305, the provisions of the latter are special, in that they provide for payment of benefits under special circumstances, and therefore must be held to control, as against the general declaration in Section 301 that

---

* This is shown by the court's refusal (R. 18, 31) of the plaintiff's proposed finding No. VII (R. 11, 24) and the acceptance (R. 17–18, 31) of the defendant's proposed finding No. VIII (R. 16, 27).

yearly renewable term insurance should cease on a certain date; (3) that an estimate of the cost to the Government of proposed amendments to Sections 301 and 305, furnished to Congressional Committees in 1926, by the Director of the Veterans' Bureau, in which he expressed an assumption to the effect that the termination of yearly renewable term insurance by Section 301 would preclude a revival and continuance of such insurance under Section 305 until total permanent disability or death occurring thereafter, should be denied significance because the estimate embodying this administrative interpretation was not incorporated in "the report of the committee", and because, in any event, it did not "purport to state an administrative practice"; (4) that amendments to Sections 301 and 305 in 1928 did not indicate Congressional adoption of the administrative interpretation, repeated at that time in an administrative opinion,*

---

* The Government filed in the Circuit Court of Appeals a copy of an opinion rendered by the General Counsel of the Veterans' Bureau, approved by the Director in February, 1928, to the effect that Section 305 was inapplicable to revive yearly renewable term insurance when the total and permanent disability or death of the insured occurred subsequent to July 2, 1927, the date fixed for the termination of such insurance by Section 301. The copy of this opinion was accompanied by a certificate of the Administrator of Veterans' Affairs, dated September 24, 1937, to the effect that the opinion was a precedent which had been applied, without modification, in administrative practice under Section 305, since it was rendered. The opinion and the Administrator's certificate appear in the Appendix, *infra*, pp. 57–62.

because, the court stated, that opinion was rendered only shortly prior to the passage of the Act containing the amendments; (5) that a long continued administrative practice requiring judicial consideration was not shown,* and that, in any event, the statutory provisions involved are too clear to permit resort to administrative practice.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

(1) In holding that a right to benefits under Section 305, World War Veterans' Act, 1924, may exist in a case involving a lapsed policy of yearly renewable term insurance where the total and permanent disability of the insured occurred after July 2, 1927, the date fixed for the termination of such insurance by Section 301 of that Act, as amended.

(2) In holding that Section 305 is not limited by the provisions of Section 301 for the termination of yearly renewable term insurance on July 2, 1927.

(3) (a) In holding that the benefits provided by Section 305 were gratuities and not founded upon contracts of insurance and were not intended to be subject to the limitations applicable to such contracts contained in other sections of the World War Veterans' Act, including Section 301.

(b) If the court was correct in so holding, in failing to hold further that the District Court was without jurisdiction of respondent's suit, since

---

* See footnote 4, *supra*.

yearly renewable term insurance should cease on a certain date; (3) that an estimate of the cost to the Government of proposed amendments to Sections 301 and 305, furnished to Congressional Committees in 1926, by the Director of the Veterans' Bureau, in which he expressed an assumption to the effect that the termination of yearly renewable term insurance by Section 301 would preclude a revival and continuance of such insurance under Section 305 until total permanent disability or death occurring thereafter, should be denied significance because the estimate embodying this administrative interpretation was not incorporated in "the report of the committee", and because, in any event, it did not "purport to state an administrative practice"; (4) that amendments to Sections 301 and 305 in 1928 did not indicate Congressional adoption of the administrative interpretation, repeated at that time in an administrative opinion,[4]

---

[4] The Government filed in the Circuit Court of Appeals a copy of an opinion rendered by the General Counsel of the Veterans' Bureau, approved by the Director in February 1928, to the effect that Section 305 was inapplicable to revive yearly renewable term insurance when the total and permanent disability or death of the insured occurred subsequent to July 2, 1927, the date fixed for the termination of such insurance by Section 301. The copy of this opinion was accompanied by a certificate of the Administrator of Veterans' Affairs, dated September 24, 1937, to the effect that the opinion was a precedent which had been applied, without modification, in administrative practice under Section 305, since it was rendered. The opinion and the Administrator's certificate appear in the Appendix, *infra*, pp. 57–62.

because, the court stated, that opinion was rendered only shortly prior to the passage of the Act containing the amendments; (5) that a long continued administrative practice requiring judicial consideration was not shown,* and that, in any event, the statutory provisions involved are too clear to permit resort to administrative practice.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

(1) In holding that a right to benefits under Section 305, World War Veterans' Act, 1924, may exist in a case involving a lapsed policy of yearly renewable term insurance where the total and permanent disability of the insured occurred after July 2, 1927, the date fixed for the termination of such insurance by Section 301 of that Act, as amended.

(2) In holding that Section 305 is not limited by the provisions of Section 301 for the termination of yearly renewable term insurance on July 2, 1927.

(3) (a) In holding that the benefits provided by Section 305 were gratuities and not founded upon contracts of insurance and were not intended to be subject to the limitations applicable to such contracts contained in other sections of the World War Veterans' Act, including Section 301.

(b) If the court was correct in so holding, in failing to hold further that the District Court was without jurisdiction of respondent's suit, since

---

* See footnote 4, *supra*.

Section 19 of the World War Veterans' Act authorizes suit only upon claims "under a contract of insurance."

(4) In misapplying well established principles of interpretation to Sections 301 and 305.

(5) In disregarding the administrative interpretation of Sections 301 and 305 and the long continued administrative practice pursuant to such interpretation.

(6) In reversing the judgment of the District Court.

SUMMARY OF ARGUMENT

I

The court below should have held that the trial court was without jurisdiction if it was correct in its holding that Section 305, World War Veterans' Act, provides a benefit which is not insurance and for that reason not subject to Section 301 of that Act, which provides that all yearly renewable term insurance should cease on July 2, 1927.

There is no authority for the respondent's suit unless it is contained in Section 19, World War Veterans' Act, which authorizes suit in the event of disagreement as to claim "under a contract of insurance." A number of cases have held in effect that the benefit provided by Section 305 is to be treated as insurance for the purposes of suit under Section 19 and in two of these cases petitions for writs of certiorari were denied. *United States* v. *Ellison*, 74 F. (2d) 864 (C. C. A. 4th), certiorari

denied, 295 U. S. 759; *United States* v. *Sellers*, 75 F. (2d) 623 (C. C. A. 5th), certiorari denied, 295 U. S. 763. The decision of the court below is contrary to these cases in so far as it held that the benefit provided by Section 305 is not insurance, and if correct in this respect, the court should have affirmed the judgment of the trial court for lack of jurisdiction.

II

The respondent's claim that the total permanent disability of the insured in 1929 matured a contract of yearly renewable term insurance which lapsed in 1919 because of the provisions of Section 305, is unfounded because:

(a) Section 301 unequivocally declares that all such yearly renewable term insurance shall cease on July 2, 1927, with exceptions expressly made exclusive, and these exceptions do not include a revival of insurance under Section 305.

(b) Since the benefit provided by Section 305 must be treated as insurance if the instant suit is not subject to dismissal for want of jurisdiction (see Summary I, *supra*) it is obviously subject to the provisions of Section 301 in one respect and there is no apparent reason why it should not similarly be subject thereto in all other respects.

(c) Section 305 was intended to give the benefits of matured insurance to veterans who had died or become totally permanently disabled when they had been denied the opportunity to continue such in-

surance without lapse or to reinstate it because of the noncollection of compensation for war-time injuries. But Congress expressly provided in Section 304 against the reinstatement of yearly renewable term insurance after July 2, 1927 (a provision comparable to that of Section 301 against continuance) and made no exception in favor of veterans whose compensation was uncollected on July 2, 1927.

(d) The fact that there is no statutory provision precluding the continuance to the date of death or total permanent disability occurring after July 2, 1927, of *converted* insurance under Section 305, provides no basis for implying an exception under Section 305 to the prohibition in Section 301 upon the continuance of *yearly renewable term* insurance beyond July 2, 1927. Section 305 was obviously not intended to confer a uniform benefit upon all veterans. This was recognized by this Court in *United States* v. *Madigan*, 300 U. S. 500, where the payment of a substantially greater sum than was allowed in that case would have resulted had the veteran's lapsed converted insurance been in the form of yearly renewable term insurance when it lapsed. Moreover, as is also indicated in the *Madigan* decision, *supra*, a restriction upon the revival of converted insurance, progressively severe with the passage of time, has from the first inhered in the revival provisions of the statute and in the premium requirements of converted policies.

(c) The Government's position is further supported by the legislative history of the provisions in question, which shows that Congress has always regarded yearly renewable term insurance as temporary and that this policy was well established when the revival provisions were made prospectively effective. Moreover, since an intention to continue yearly renewable term insurance under the revival provisions beyond the date fixed for its termination is not disclosed either upon the face of the statute or in the legislative history, no amendment to the section limiting the continuance of such insurance should be implied in the enactment of the revival provisions, particularly since this would involve the modification of a well established policy.

The legislative history further shows that the reinstatement and revival provisions had their inception at the same time and in the same section and were complementary to each other, thus supporting the Government's contention that these provisions were intended to be coterminus and that such intention is effected by the specific provisions prohibiting the reinstatement of yearly renewable term insurance after July 2, 1927, and the specific provisions prohibiting the continuance of such insurance after that date.

The legislative history shows also that Congress has acquiesced in an administrative interpretation of the provisions in question identical with that urged by the Government and under circumstances

which have amounted to a legislative adoption of that interpretation.

(f) The statutory provisions here in question do not contradict each other but are entirely harmonious in themselves and with respect to other pertinent provisions of the statute; but if, contrary to our view, it be considered that there is conflict, the specific provision against the continuance after July 2, 1927, of the temporary contracts granted in yearly renewable term insurance should control over the general provisions embodied in Section 305 for the revival of all forms of lapsed insurance.

ARGUMENT.

I

IF THE COURT BELOW WAS CORRECT IN HOLDING THAT THE BENEFIT PROVIDED BY SECTION 305 IS A GRATUITY NOT SUBJECT TO THE PROVISIONS OF SECTION 301, RELATING TO INSURANCE CONTRACTS, IT MUST FOLLOW THAT THE TRIAL COURT LACKED JURISDICTION UNDER SECTION 19, AUTHORIZING SUITS ON SUCH CONTRACTS

The opinion of the court below presents preliminarily a jurisdictional question because of its holding that the benefit provided by Section 305 of the World War Veterans' Act, 1924, *supra*, is a gratuity not subject to the provisions of Section 301 of that Act, *supra*, relating to insurance contracts. If this holding is correct, it would logically follow that the benefit in question is to be treated also as a gratuity not subject to other provisions of the World War Veterans' Act relating to contracts of insurance, including Section 19 of the Act, under

which the instant suit was brought, and that therefore the trial court was without jurisdiction.

Section 305, *supra*, provides that where insurance has lapsed and the insured dies or becomes totally permanently disabled under certain prescribed circumstances, his insurance "shall not be considered as lapsed" and shall be payable subject to the deduction of the premiums (and interest thereon) which, if paid, would have continued it in force to the date of maturity. In other words, this section provides that the insurance, though lapsed in fact, shall be treated as continuing in force.

Section 301, *supra*, clearly prohibits the continuance of yearly renewable term insurance after July 2, 1927, with certain exceptions not applicable here. It contains provisions that "not later than" that date all such insurance "shall be converted" into other forms, and that all such insurance "shall cease" on that date. Despite this clear language the court below held that Section 305 authorized the payment of benefits in the instant case, in which the yearly renewable term insurance lapsed in 1919, although the insured did not become totally and permanently disabled until 1929. The court reached this conclusion upon the ground that Section 305 bears no relation to Section 301, since Section 305 "does not extend or renew insurance with the correlative rights of insurer and insured," but merely "provides for the payment of a gratuity in

the form of insurance." (R. 33.) Thus the court held, in effect, that the benefit provided by Section 305 does not arise under a contract of insurance and is not to be so treated.

The position of the court below places the respondent upon the horns of a dilemma, in so far as the jurisdiction of the trial court in the instant case is concerned. Section 19 of the World War Veterans' Act, as amended (U. S. C., Title 38, Sec. 445), confers jurisdiction upon a District Court only in the event that there has been a disagreement "as to claim * * * *under a contract of insurance* * * * between the bureau and any person or persons claiming thereunder." [Italics ours.] The Government has heretofore often urged that jurisdiction was lacking in the District Courts of suits claiming benefits under Section 305 for the reason that a claim for such benefits is not a claim under a contract of insurance, but the courts have uniformly rejected this contention and in two cases this Court denied petitions for writs of certiorari to review such a holding. (*United States* v. *Ellison*, 74 F. (2d) 864, 868 (C. C. A. 4th), certiorari denied, 295 U. S. 750; *United States* v. *Sellers*, 75 F. (2d) 623 (C. C. A. 5th), certiorari denied, 295 U. S. 763; *United States* v. *Knott*, 69 F. (2d) 907 (C. C. A. 6th); *United States* v. *Hendrickson*, 53 F. (2d) 797 (C. C. A. 10th); *United States* v. *Vance*, 48 F. (2d) 472 (C. C. A. 8th).) Moreover, in *United States* v. *Weaver*, 86 F. (2d) 372 (C. C. A. 4th), it was held that the

benefit conferred by Section 305 is not a gratuity but is contractual in nature and hence is protected by the Fifth Amendment. Cf. *United States* v. *Jackson*, 89 F. (2d) 572 (C. C. A. 4th), holding a similar statutory benefit to be contractual in nature.[6]

If the court below is correct in holding that the benefit provided by Section 305 is a gratuity, not founded upon a contract of insurance, and not to be so treated, with the result that Section 301, relating to such contracts, has no application, then it follows necessarily, we think, that Section 19, authorizing suit only upon a claim "under a contract of insurance," is also inapplicable for precisely the same reasons. Since this suit was brought under Section 19 (R. 5) and there was no authority to sue the United States for any benefits provided by the World War Veterans' Act except under that section,[7] the court below should logically

---

[6] The decision was affirmed by this Court on other grounds. (302 U. S. 628.)

[7] Section 5 of the World War Veterans' Act, as amended (U. S. C., Title 38, Sec. 426), provides that the Administrator of Veterans' Affairs "shall decide all questions arising under this Act; and all decisions of questions of fact and law affecting any claimant to the benefits of Titles II, III or IV of this Act [which include Section 305] shall be conclusive, except as otherwise provided herein." The only provision of the Act which authorizes suit against the Government is contained in Section 19. It therefore follows that no other Act may be invoked to permit suit for the benefit provided by Section 305. Cf. *Silberschein* v. *United States*, 266 U. S. 221.

have held that the District Court was without jurisdiction.*

II

SECTION 301 PREVENTS THE CONTINUANCE OF THE YEARLY RENEWABLE TERM INSURANCE HERE INVOLVED BEYOND JULY 2, 1927, AND HENCE PREVENTS THE CONTINUANCE OF SUCH INSURANCE UNDER SECTION 305 TO DECEMBER 1, 1929, WHEN THE INSURED BECAME TOTALLY PERMANENTLY DISABLED

The respondent's claim is based upon a contract of yearly renewable term insurance which lapsed for the nonpayment of premiums in 1919. The court below held that, despite the lapse, benefits were payable from December 1, 1929, when the insured became totally permanently disabled. It relied upon Section 305, which, as previously stated, provides that insurance, though lapsed in fact, shall under certain circumstances be treated as continuing in force. This holding is, we submit, incorrect for a number of reasons.

(a) Section 301 *supra*, pp. 2–4, on its very face prevents the continuance under Section 305 of the yearly renewable term insurance in the instant case beyond July 2, 1927, because it expressly provides for the termination of such insurance on that date, contains specific exceptions which do not include continuance of insurance under Section 305, and unequivocally directs that these exceptions

---

* The failure to so hold would, of course, be reviewable by this Court, even though the question was not raised or considered in the court below. *United States* v. *Corrick*, 298 U. S. 435, 440; *United States* v. *Griffin*, 303 U. S. 226, 229.

shall be exclusive. The first paragraph of Section 301 expressly declares that *"except as provided in the second paragraph of this section"* all yearly renewable term insurance shall be converted into other forms of insurance "not later than July 2, 1927", and the second paragraph of the section similarly provides that subject to certain exceptions all such insurance "shall cease on that date."

The exceptions, as stated in the latter paragraph and amplified in the third paragraph, include only cases (1) where the insurance matured by total permanent disability on or before July 2, 1927, and the insured has been "declared to be no longer permanently and totally disabled" after that date, and (2) where conversion of the insurance on July 2, 1927, was impracticable or impossible due to the mental condition or disappearance of the insured,—extensions of the time limitation upon the continuance of yearly renewable term insurance being allowed in each of these two classes of cases. But aside from the fact that Section 301 expressly provides that the exceptions contained in it shall be exclusive, if Congress had intended that the revival and continuance of yearly renewable term insurance under Section 305 should constitute another exception, it may be assumed that it would have been added to those contained in Section 301. The omission to make such a provision is sufficient alone, it is submitted, to preclude any implication that such an exception was intended.

The fact that Section 305, on its face, contains language which permits it to operate prospectively with respect to maturity of yearly renewable term as well as converted insurance provides no support for the view of the court below. This fact is wholly consistent with the time limit upon the continuance of yearly renewable term insurance, since there remained as of June 7, 1924, when Section 305 was enacted, a period of more than two years within which Section 305 might operate prospectively to mature yearly renewable term insurance. (See Appendix, *infra*, p. 48.)

(b) It must be held that Section 301 controls Section 305, in part at least, unless veterans receiving the disability benefits of yearly renewable term insurance under Section 305, who are declared to be no longer totally permanently disabled, are to be deprived of the privilege granted by the exception in Section 301 permitting such yearly renewable term insurance to be continued under these circumstances beyond July 2, 1927. The holding of the court below that there is no relation between Sections 301 and 305 for the stated reason that the former deals with insurance while the latter provides merely a gratuity, not only places respondent upon the horns of a dilemma in relation to the trial court's jurisdiction of the instant case, as previously stated, but is also contrary to a long continued administrative practice beneficial to veterans. Where veterans receiving disability benefits under Section 305, in cases involving yearly renewable

term insurance, have been declared to be no longer totally permanently disabled, the Veterans Administration has from the beginning consistently followed the practice of recognizing that the exception in Section 301 to the time limit on such insurance is applicable and has permitted the continuance of the insurance beyond July 2, 1927. (See letter from the Administrator of Veterans Affairs to the Solicitor General, dated November 14, 1938, Appendix, *infra*, pp. 62–65.) Since this exception to the time limitation in Section 301 is applicable to cases arising under Section 305, there is no apparent reason why the time limitation itself should not also be applicable to such cases.

(c) That Congress intended the time limitation in Section 301 to be applicable to the *revival* of yearly renewable term insurance under Section 305 is further indicated by the fact that it placed a similar limitation upon the *reinstatement* of such insurance. Section 304 of the World War Veterans' Act, as amended (Appendix, *infra*, pp. 53–64), provides in this connection that "except as provided in Section 301 of the World War Veterans' Act, as amended,* no yearly renewable term insurance shall be reinstated after July 2, 1927." The basis of providing for the revival of insur-

*This exception relates to cases where veterans whose insurance matured by reason of total permanent disability prior to July 2, 1927, have thereafter been declared to be no longer so disabled. (Section 301, World War Veterans' Act, *supra*, p. 3.)

ance under Section 305 is the fact that an insured who has not received the compensation due him, has thus presumably been denied the opportunity of continuing his insurance or of reinstating it under Section 304. *United States* v. *Madigan*, 300 U. S. 500, 504. His right to reinstate yearly renewable term insurance, however, was limited to July 2, 1927, despite the fact that he may similarly have been denied the opportunity of reinstating it prior to that date for want of the compensation due him. Under the circumstances we submit that there is no reason whatever why the reinstatement of yearly renewable term insurance should have been thus limited, and the revival of such insurance should be left with no limitation whatever, as held by the court below.

Moreover, Section 305 is based not only upon the presumption, as previously indicated, that if the compensation due an insured had been paid to him it would have been used to continue his insurance or if it had lapsed to reinstate it (thus having the purpose of doing for the insured what he might have done for himself if he had received the compensation), but also upon the further presumption that the Government and not the insured was responsible for the fact that the compensation was unpaid. See *United States* v. *Madigan, supra*, *United States* v. *Hendrickson*, 53 F. (2d) 797, 799 (C. C. A. 10th). However, Congress no doubt recognized that this latter presumption would be

limited in its duration and, therefore, intended that there should be a time limit upon revival under Section 305. Compensation is payable for disabilities incurred during service in the World War (Section 200, World War Veterans' Act, U. S. C., Title 38, Sec. 471) and it is reasonable to assume that Congress recognized that as the period of service became more remote the number of pending claims would diminish and the presumption that compensation was unpaid because of delay on the part of the Government in acting upon claims would progressively lose its strength until finally the opposite presumption would arise that the compensation was unpaid only because of delay on the part of the veteran in claiming it or in supporting his claim by satisfactory evidence. It is submitted that since the reasons for the revival of term insurance would thus disappear in the course of time, Congress, by Section 301, intended to place a time limit upon revival coinciding with the limitation upon the reinstatement of such insurance. It was no doubt anticipated that by that time the meritorious claims for compensation would have been presented and payments commenced on them.

Without the time limit on revival which, we submit, Congress has imposed, an anomalous result would have obtained. The revival of insurance upon death or total permanent disability occurring after July 2, 1927, would have given to an insured, whose compensation remained uncollected, a benefit

which he could not have obtained for himself if the compensation had been paid. For example, if an insured whose term insurance had lapsed, collected all of the compensation due him prior to July 2, 1927, he might have used it to reinstate the insurance, but he could not have continued it beyond July 2, 1927, because of the provisions of Section 301; if he collected all of the compensation due him after July 2, 1927, and prior to becoming totally permanently disabled, he could not have used it to reinstate the term insurance because of the provisions of Section 304.

(d) The first to which the court below alluded (R. 54), that no such limitation as that upon yearly renewable term insurance was placed upon the revival of converted insurance, provides no reason for concluding that Congress intended, in making the provisions for revival of insurance prospectively effective for the first time by the Act of March 4, 1923, or in subsequent enactments of those provisions (Appendix, *infra*, pp. 44, 45, 50, 52), to depart from the policy already well established by statute that yearly renewable term insurance should be temporary only, but that converted insurance should have a permanent status.[10] On the contrary, this fact merely shows an intention to provide for revival of all forms of insurance, without attempting to avoid differences in results which arise from differences in the terms of the insurance contracts

[10] See discussion, *infra*, pp. 31–34.

or in the statutory provisions relating to them. It is merely a result of the difference in status between the two forms of insurance (term and converted) and has the same significance as the fact that more term than converted insurance may be revived by a given amount of uncollected compensation because of the difference in premium rates between the two kinds of insurance, or the fact that more insurance may be revived under an ordinary life policy than under an endowment policy or any of the other forms of converted insurance with a higher premium rate.

The court below, in relying upon the fact that converted insurance is not limited in its prospective revival as indicating an intention on the part of Congress that the revival of yearly renewable term insurance should be without time limitation in its prospective effect, wholly ignores the decision of this Court in *United States* v. *Madigan*, 300 U. S. 500, which recognized that the rights of veterans under Section 305 were subject to the terms and conditions of the various forms of insurance contracts to which that section applies. In that case the veteran, whose term insurance had been converted and whose converted insurance had lapsed under circumstances permitting its revival in the sum of $2,170.92, sought the revival of term insurance in the larger sum of $6,469.73, to which he would have been entitled had his term insurance

been permitted to lapse at the time when, instead, he converted it."[11] This Court reversed the judgment of the Circuit Court of Appeals, awarding the larger sum sought, and held that (p. 506) "the right of respondent to revive his insurance is limited to the lapsed twenty-payment life policy." Thus it was recognized that Congress did confer upon veterans, under Section 305, benefits which varied in amount depending, in part at least, upon the form of insurance to which it applied; that it intended the provisions of Section 305 to be read in the light of the differences in premium rates of the various forms of insurance prescribed under the authority of the World War Veterans' Act. (Section 301, *supra*, pp. 2–3.) In the instant case it is the temporary character of the yearly renewable term insurance prescribed by that Act, as previously stated, which precludes the revival and continuance of such insurance after July 2, 1927, and thus, incidentally, favors the veteran whose insurance was converted prior to its lapse—in that respect reversing the situation in the *Madigan* case, where conversion resulted in the payment of a lesser benefit.

Furthermore, there would seem no reason to suppose that, when the provisions for revival were first given a prospective effect by the Act of March 4, 1923 (Appendix, *infra*, p. 45), Congress antici-

---

[11] See Government's brief in the *Madigan* case, p. 4, footnote 1.

pated that the amount of converted insurance which might be subject to revival under that Act would be large enough in comparison with the amount of term insurance revivable to justify placing any other limitation on the revival of the converted insurance than that which inhered in the revival provisions themselves [11] and the terms of the converted policies.[12]

---

[11] The Act of March 4, 1923, first providing for the prospective revival of insurance required the following conditions: (1) Lapse of insurance prior to March 4, 1923 (2) at a time when the veteran was suffering from a compensable disability (3) for which compensation was uncollected (4) followed by death or total permanent disability at a time when compensation remained uncollected (5) in sufficient amount to cover all of the unpaid premiums upon the insurance to be revived. (See Appendix, *infra*, pp. 44–45.)

[12] The different forms of converted insurance authorized by Section 301 have widely varying premium rates, all of which are substantially larger than the premium rate upon yearly renewable term insurance. For example, at age 21 the premium on $10,000 yearly renewable term insurance would be $6.50 per month (Bulletin No. 1, Treasury Department, Regulations & Procedure, U. S. Veterans' Bureau (1930), Part II, pp. 1233, 1234), whereas the premium upon each of the other forms and the excess over the term premium would be as follows:

Form of Converted Insurance	Monthly Premium Rate	Excess Each Month Over Term Premium Rate
Ordinary Life	$11.70	$5.20
30-Payment Life	14.30	7.80
Endowment at Age 62	14.30	7.80
20-Payment Life	17.90	11.40
20-Year Endowment	20.80	14.30
20-Year Endowment	32.30	26.80

There was available to Congress information to the effect that while forty billion dollars of yearly renewable term insurance had been issued during the World War,[14] less than one and one-quarter billion dollars of converted insurance had been issued prior to March 4, 1923.[15] Moreover, revival was limited to insurance which had lapsed prior to that date, and while approximately thirty seven billion dollars of yearly renewable term insurance had lapsed prior to March 4, 1923, only about 1/214 as much converted insurance had lapsed as of that date.[16] Furthermore, compensable disability at the time of the lapse of insurance was a condition to revival, and Congress must have recognized it as unlikely that veterans whose earning power was thus reduced by disability [17] would have converted

---

[14] See *Lynch* v. *United States*, 292 U. S. 571, 576, footnote 2.

[15] The Annual Report of the Director, United States Veterans Bureau, 1923, p. 659, shows that as late as June 30, 1923, the insurance converted amounted to $1,216,064,021.

[16] The Annual Report of the Director, United States Veterans Bureau, 1923, p. 658, shows that as of June 30, 1923, the aggregate sum of all forms of Government insurance in force was less than $3,000,000,000. According to information received from the Veterans Administration, the amount of converted insurance lapsed as of March 31, 1923, was only $172,530,079. Thus approximately $37,000,000,000 of yearly renewable term insurance was in a state of lapse.

[17] A disability to be compensable was required to reduce the veteran's earning capacity by 10% or more. (Section 302 (2) of the War Risk Insurance Act, as amended by the Acts of October 6, 1917, c. 105, 40 Stat. 398, 408, and December 24, 1919, c. 16, 41 Stat. 371, 378.)

their insurance in view of the higher premium rate on the converted policy and the fact that their term insurance contracts afforded the same disability and death benefits as the converted contracts. Also, it was reasonable to presume that most of those who had converted their insurance despite disabilities were in a position to maintain it in force and had done so; and that of those who had allowed it to lapse comparatively few, in view of the larger premium rate, would be able to meet the requirement of the statute that the compensation due them but uncollected on the date of death or total permanent disability be in an amount sufficient to cover the entire sum of the unpaid premiums. It must have been anticipated that as time went on the number of cases meeting this condition would progressively diminish.[18]

(e) The Government's position is further supported by the legislative history of the provisions for limiting the continuance of yearly renewable term insurance and for the revival and continuance of insurance, respectively. This legislative history shows that Congress has from the beginning adopted the policy of providing that yearly renewable term insurance should be temporary in character and that the subsequently enacted provisions for revival, later embodied in Section 305, were en-

[18] A requirement far less likely to be met with respect to converted policies than with respect to term insurance. See footnote 13, *supra*.

acted in the light of that policy and were intended to be governed by the provisions establishing it.

(All of the sections of the World War Veterans' Act here involved had their inception in the War Risk Insurance Act, as amended, and in tracing the legislative history of these sections, as contained in the sections of the War Risk Insurance Act, the comparable sections of the World War Veterans' Act are indicated in brackets for the convenience of the Court.)

As stated in the opinion of the Circuit Court of Appeals for the Tenth Circuit on rehearing in *Shelton* v. *United States*, 88 F. 599, 603, which directly supports the Government's position, Congress from the outset placed a time limit upon the continuance of yearly renewable term insurance, but made no provision effective prospectively for the revival and continuance of lapsed insurance until more than five years later. Section 404 [Section 301] [10]

---

[10] The similarity between these two sections of the respective Acts is readily apparent from a comparison of their terms. Each provided that "Not later than" a certain date "term insurance * * * *shall* be converted" into other forms of insurance, with an extension in favor of persons whose insurance matured by total permanent disability and who were found to be no longer so disabled after the limitation had expired. (Appendix, *infra*, pp. 47, 48.) In thus requiring conversion of the term insurance by a specified date, these provisions also placed a time limit by necessary implication upon the continuance of such insurance, which manifestly could not remain in force after that date. Therefore, the further provision in Section 301 (omitted in Section 404), that all such insurance "shall cease" on the date in question except where death or total permanent disability

containing such a time limitation, was first enacted in the War Risk Insurance Act of October 6, 1917. This section limited the duration of yearly renewable term insurance to a period of five years after the termination of the war.[20] (Appendix, *infra*, p. 43.) By the Act of August 9, 1921, the section was amended by adding a provision extending such time limitation in favor of persons whose insurance had matured by disability and who had later been found to be no longer disabled. (Appendix, *infra*, pp. 43–44.)

The original Act of October 6, 1917, made no provision for revival and continuance of insurance. Such provisions were enacted for the first time in Section 408 [Section 305][21] by the Act of August 9,

---

of the insured shall have occurred meanwhile (Appendix, *infra*, p. 48), was evidently inserted merely for the purpose of making the preceding provision more explicit, and was not intended to give it a meaning different from that it already possessed.

[20] By the Act of July 2, 1921, c. 40, 42 Stat. 105, the termination of the war was declared to have occurred on July 2, 1921. By the Act of June 2, 1926, the date of the expiration of term insurance was fixed as July 2, 1927. (See Appendix, *infra*, p. 51a)

[21] Each of these sections provided that, upon certain conditions, the lapsed insurance (or, under Section 305, at least a part of it), "shall not be considered as lapsed," and payment thereof shall be made, less the premiums and interest thereon. (Appendix, *infra*, pp. 49–50.) The only differences between these sections were that Section 408 required as a condition to revival that there be sufficient uncollected compensation to pay all unpaid premiums, while Section 305 provided for revival of part of the insurance where the uncollected compensation was insufficient to revive the entire amount; that Section 305 added a provision, not contained

1921 (Appendix, *infra*, pp. 44–45), but were not made prospectively effective with respect to the death or total permanent disability of the insured until Section 408 [Section 305] was amended to that effect by the Act of March 4, 1923 (Appendix, *infra*, pp. 44–45)." Accordingly, when the provisions for revival and continuance of lapsed insurance were first made prospectively effective in 1923, Congress had already adopted a policy of placing a time limit upon the continuance of yearly renewable term insurance and that policy had continued for more than five years. If it were intended by the 1923 Act to make an exception to the policy thus adopted as to term insurance, by permitting the continuance of such insurance to a date of maturity by death or disability beyond that previously fixed for its termination under Section 404 [Section 301], it would seem reasonable to assume either that Section 408

---

in Section 408, as to the rate to be adopted in computing the uncollected compensation, and omitted a provision which had been contained in Section 408 for the payment, under certain conditions, of insurance which the insured had been unsuccessful in reinstating after lapse; and that Section 408 contained provisions for reinstatement of insurance which were later incorporated with amendments in Section 304 of the World War Veterans' Act. (See Appendix, *infra*, pp. 53–54.)

" The Act of August 9, 1921, had provided for revival in cases where the insurance had been allowed to lapse while the insured was suffering from a compensable disability and "has since died." The Act of March 4, 1923, substituted in place of this phrase the words "dies or has died," thus giving the provision a prospective as well as a retroactive effect. (See Appendix, *infra*, pp. 44, 45.)

[Section 305] would have contained a provision to that effect, or that Section 404 [Section 301] would have been amended by adding another exception[**] to the one enacted by the Act of August 9, 1921. (Appendix, *infra*, pp. 43–44.) However, no such provision was made in either section, and neither of them was subsequently amended.

Furthermore, it is submitted that no such exception should be implied. To do so would necessarily involve an amendment by implication of Section 404 (Section 301) by Section 408 (Section 305), as amended by the Act of March 4, 1923 (Appendix, *infra*, pp. 44–45), since, as previously stated, Section 404 (Section 301) was in existence when that Act was passed, and the application of Section 408 (Section 305) to the revival and continuance of lapsed yearly renewable term insurance beyond the date fixed for its termination by Section 404 (Section 301) would manifestly have been inconsistent with the latter. The rule is well settled that implied amendments are not favored, and that an intention to amend will not be imputed unless the statutes involved admit of no other construction. *Rosencrans* v. *United States*, 165 U. S. 257, 262; *Frost* v. *Wenie*, 157 U. S. 46, 58; *Washington* v. *Miller*, 235 U. S. 422, 428; *United States* v. *Healey*, 160 U. S. 136, 147; *United States* v. *Bur-*

[**] Of course, no exception would have been necessary when Section 408 [Section 305] was first enacted in 1921, since it applied at that time only to cases where death had already occurred. (Appendix, *infra*, pp. 44, 45.)

roughs, 289 U. S. 159, 164. And this is especially true where, as here, such an amendment would involve the modification by implication of a well established policy embodied in an earlier and different section of the Act. *United States* v. *Munday*, 222 U. S. 175, 182; *Ibanez* v. *Hongkong Banking Corp.*, 246 U. S. 621, 626; *United States* v. *Madigan*, 300 U. S. 500, 506.

Moreover, the policy of limiting the continuance of yearly renewable term insurance was thereafter consistently adhered to in the repeated reenactments of the limitation provisions without incorporating any exception exempting the revival of such insurance therefrom, and in the reenactment of the revival provisions without embodying any provision for the revival of term insurance after the expiration of the time limit fixed by the limitation provision (Appendix, *infra*, pp. 47–53).

The legislative history further indicates that the provisions for revival and those for reinstatement (which were obviously subject to the statutory time limitation upon term insurance)[**] were intended to be coterminous in their application to such insurance. Those provisions were enacted at the same time and in the same section and were complementary to each other. Both relate to the restoration of the lapsed insurance of disabled veterans—the reinstatement provisions applying only when the veteran was less than totally permanently

[**] See discussion, *supra*, p. 21.

disabled; the revival provisions applying only in the event of total permanent disability or death. See Section 408, War Risk Insurance Act, as amended by the Act of August 9, 1921 and by the Act of March 4, 1923, Appendix, *infra*, pp. 44–45.

Furthermore, the legislative history of the Acts amending Sections 301 and 305 of the World War Veterans' Act, 1924, shows clearly that Congress has acquiesced in an administrative interpretation of these sections identical with the interpretation urged here, under circumstances which have amounted to a legislative adoption of that interpretation. Prior to the Act of June 2, 1926, which reenacted Section 301, with amendments to the provisions limiting the continuance of yearly renewable term insurance (Appendix, *infra*, pp. 51–52), the Director of the Veterans Bureau both by testimony and by letter had clearly disclosed to Congressional committees of both Houses that under his interpretation of the sections in question (which he presumably proposed to follow in administering them)[25], term insurance could not be revived under Section 305 after the date fixed for its termination in Section 301 (Appendix, *infra*, pp. 54–57). These committees were at that time considering bills purporting to amend Section 301 by extending the limitation on term insurance and to amend Section 305 by

[25] The question had not theretofore arisen for administrative decision, since the period of limitations under Section 301 as it then stood, had not yet expired. (Appendix, *infra*, p. 48.)

limiting the class of beneficiaries entitled to insurance revived under that section. Contrary to the assumption in the opinion of the court below (R. 58), the administrative interpretation was twice brought to the attention of Congress itself by its Committees—the letter from the Director, Veterans Bureau, being attached to the Committee Reports. (Appendix, *infra*, pp. 54–55.) In this connection, there is clearly no merit in the assumption of the court below that the Director's statements did "not purport to state an administrative practice" (R. 58.) While it is true that the statements did not relate to administrative practice in the past, they were manifestly disclosures of the Director's intention with respect to the practice in the future, and would seem, therefore, to have the same bearing on the question of legislative approval of the interpretation as would a statement of practice in the past. Thus Congress, although fully advised that the Director intended to administer Section 305 under an interpretation to the effect that it was limited as to yearly renewable term insurance by Section 301, reenacted the limitation provisions in Section 301 without change in that respect. (Act of June 2, 1926, Appendix, *infra*, pp. 51–52). Moreover, a month later Section 305 was also reenacted in its entirety, with certain amendments, none of which indicated any disagreement with the administrative interpretation and one of which limited the

class of beneficiaries of revived insurance, thus restricting the scope of the section. (Act of July 2, 1926, Appendix, *infra*, p. 52.)

Additionally, Congress, by the Act of May 29, 1928 (Appendix, *infra*, p. 52), again reenacted Section 301 with amendments, and amended Section 305, without disturbing the administrative interpretation, although *three months* prior to this Act a formal opinion of the General Counsel of the Veterans Bureau containing that interpretation had been adopted by the Director as the official interpretation of the provisions in question (Appendix, *infra*, pp. 58–62).[20] The interpretation, thus adopted, has been followed without modification in administering these sections for at least ten years, according to a certificate of the Administrator of Veterans' Affairs, dated September 24, 1937, and his letter to the Solicitor General, dated June 9, 1938. (Appendix, *infra*, pp. 57–58, 62.) Meanwhile, Section 301 has been amended three times more without disturbing the administrative interpretation—including an amendment in 1937 which involved another reenactment of the entire paragraph containing the provision requiring conversion of yearly renewable term insurance by July 2, 1927. (See summary of Acts of July 3, 1930, June 24, 1932, and June 1, 1937, Appendix, *infra*, pp. 52–53.)

---

[20] Consequently, the implication in the court's opinion (R. 58) that Congress could not have been aware of this official interpretation, is unwarranted.

Thus Congress, in the face of a long continued administrative interpretation of the sections in question, which was disclosed to it as early as 1926, and which was again set forth in an official opinion approved by the Director of the Veterans Bureau, has amended these sections frequently (including amendments which modified the time limitation upon yearly renewable term insurance in Section 301, and one which had the effect of limiting the amount of the Government's liabilities under Section 305) without disturbing that interpretation. Moreover, these amendments involved a reenactment of Section 305 and several reenactments of Section 301. It is submitted that this amounts to a legislative adoption of the interpretation, which should not be disturbed. *United States* v. *G. Falk & Brother*, 204 U. S. 143, 152; *Copper Queen Mining Co.* v. *Arizona Board*, 206 U. S. 474, 479; *United States* v. *Hermanos y Compania*, 209 U. S. 337, 339; *Johnson* v. *Manhattan Ry. Co.*, 289 U. S. 479, 500; *New Haven R. R.* v. *Interstate Com. Com.*, 200 U. S. 361, 401–402; *Komada* v. *United States*, 215 U. S. 392 396; *National Lead Co.* v. *United States*, 252 U. S. 140, 145–147; *Helvering* v. *Bliss*, 293 U. S. 44, 79; *Zellerbach Co.* v. *Helvering*, 293 U. S. 172, 179–180; *Taft* v. *Commissioner*, 304 U. S. 351, 357; *Lang* v. *Commissioner*, 304 U. S. 264, 270.

The administrative practice in this respect was disregarded by the court below because the court

(1) apparently considered that the certificate of the Administrator of Veterans' Affairs disclosing the long continued administrative practice was not a proper subject of judicial notice, and (2) therefore considered that a long continued administrative practice was not shown. (R. 58–59.) The certificate of the Administrator, clearly stating the practice, was filed in the court below annexed to a copy of the opinion of the General Counsel (which the court below mentions in its opinion), and both the opinion and the certificate appear in full in the Appendix to the brief which the Government filed there.

It cannot be doubted, of course, that the practice followed in administering the sections in question is a proper subject of judicial notice by this Court (*Caha* v. *United States*, 152 U. S. 211, 221–222; *New York Indians* v. *United States*, 170 U. S. 1, 32; *Thornton* v. *United States*, 271 U. S. 414, 420; *Helvering* v. *Bliss*, *supra*; *United States* v. *Madigan*, *supra*, p. 505; *Zellerbach Co.* v. *Helvering*, *supra*; *Taft* v. *Commissioner*, *supra*; *Lang* v. *Commissioner*, *supra*) in spite of the implied refusal of the court below to notice it (*deBearn* v. *Safe Deposit Co.*, 233 U. S. 24, 32). Such practice may be ascertained from any source which this Court deems trustworthy. *The Montello*, 11 Wall. 411, 414–415; *Brown* v. *Piper*, 91 U. S. 37, 42; *Jones* v. *United States*, 137 U. S. 202, 216. That the certificate of

the Administrator of Veterans' Affairs filed in the court below and his letter to the Solicitor General (Appendix, *infra*, pp. 57–62) constitute a source of this character would seem beyond question. This Court accepted a similar letter as establishing administrative practice in *United States* v. *Madigan*, *supra*, and it is to be assumed that the failure of the court below to notice the Administrator's certificate in the instant case was based solely upon a misconception that its contents were not within judicial knowledge.

(f) The court below relied upon the rule of construction that where two statutory provisions apparently contradict each other and one is general while the other is specific, the latter controls the former. (R. 55.) But we submit that this rule has no application in support of the court's conclusion for two reasons:

(1) As we have heretofore indicated, the provisions of Section 301 and Section 305 are not in contradiction to each other in any respect, but, on the contrary, are entirely harmonious in themselves and in respect of other pertinent provisions of the statute.

(2) If, however, contrary to our view, it be considered that there is conflict between Sections 301 and 305, the provisions of the former must control, since they are special provisions embodying a definite policy toward the temporary insurance granted in yearly renewable contracts, while those in Sec-

tion 305 are general provisions for the revival of all forms of lapsed insurance. *Skelton* v. *United States*, 88 F. (2d) 599 (C. C. A. 10th); *Missouri* v. *Ross*, 299 U. S. 72, 76.

The court below relied in this connection on *Townsend* v. *Little*, 109 U. S. 504, 512. (R. 55, 57.) But it is submitted that the opinion in that case, and especially the portion thereof quoted in the opinion below (R. 55), strongly supports the contention of the Government on this point. It was there held that a deed executed by a mayor of a city, although without witnesses as required by the general law, nevertheless conveyed legal title in view of the statute providing for deeds of conveyance by mayors which merely required execution under the corporate seal. It is said in effect by this Court in the portion of the opinion quoted below (R. 55) that the statute relating to deeds of conveyance by mayors was a "provision for the execution of a particular class of deeds", and was "not controlled by the law of the territory requiring deeds generally to be executed with two witnesses." Applying this language to the case at bar, we submit that the provisions of Section 301 of the World War Veterans' Act limiting the continuance of a particular class of insurance (i. e., yearly renewable term) are not to be controlled by the provisions of Section 305 of that Act for the revival and continuance of veterans' insurance generally.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the Circuit Court of Appeals should be reversed.

ROBERT H. JACKSON,
Solicitor General.
JULIUS C. MARTIN,
Director, Bureau of War Risk Litigation.
WILBUR C. PICKETT,
FENDALL MARBURY,
Special Assistants to the Attorney General.
W. MARVIN SMITH,
Attorney.

NOVEMBER 1938.

APPENDIX

The first authority to grant war risk insurance is contained in the Act of October 6, 1917, c. 105, Sec. 2, 40 Stat. 398, 409–410, amending the War Risk Insurance Act by adding the following section, among others:

> SEC. 404. That during the period of war and thereafter until converted the insurance shall be term insurance for successive terms of one year each. Not later than five years after the date of the termination of the war as declared by proclamation of the President of the United States, the term insurance shall be converted, without medical examination, into such form or forms of insurance as may be prescribed by regulations and as the insured may request. Regulations shall provide for the right to convert into ordinary life, twenty payment life, endowment maturing at age sixty-two, and into other usual forms of insurance and shall prescribe the time and method of payment of the premiums thereon, * * *

The Act of August 9, 1921, c. 57, Sec. 24, 42 Stat. 147, 155, amended Section 404 by adding the following provisions:

> In case where an insured whose yearly renewable term insurance has matured by reason of total permanent disability is found and declared to be no longer permanently and totally disabled, and where the insured is required under regulations to renew payment of premiums on said term insurance, and where this contingency is extended be-

yond the five-year period during which said yearly renewable term insurance otherwise must be converted, there shall be given such insured an additional period of two years from the date on which he is required to renew payment of premiums in which to convert said term insurance as hereinbefore provided.

The Act of August 9, 1921, *supra*, also added Section 408 to the War Risk Insurance Act, which, as amended by the Act of March 4, 1923, c. 291, Sec. 7, 42 Stat. 1521, 1525–1526, provided in part:

> SEC. 408. In the event that all provisions of the rules and regulations other than the requirements as to the physical condition of the applicant for insurance have been complied with, an application for reinstatement of lapsed or canceled yearly renewable term insurance or application for United States Government life insurance (converted insurance) hereafter made may be approved: *Provided*, That the applicant's disability is the result of an injury or disease, or of an aggravation thereof, suffered or contracted in the active military or naval service during the World War: *Provided further*, That the applicant during his lifetime submits proof satisfactory to the director showing the service origin of the disability or aggravation thereof and that the applicant is not totally and permanently disabled. As a condition, however, to the acceptance of an application for the reinstatement of lapsed or canceled yearly renewable term insurance or United States Government life insurance (converted insurance) the applicant shall be required to pay all the back monthly premiums which would have become payable if such insurance had not lapsed, together with in-

terest at the rate of 5 per centum per annum compounded annually on each premium from the date said premium is due by the terms of the policy; *Provided further*, That where any soldier has heretofore allowed his insurance to lapse, while suffering from wounds or disease suffered or contracted in line of service, and was at the time he allowed his [said policy] *insurance* to lapse entitled to compensation on account thereof in a sum equal to or in excess of the amount due from him in premiums on his said insurance, and [has since died] *dies or has died* from said wounds or disease, *or becomes or has become permanently and totally disabled by reason thereof*, without collecting [or making claim for] said compensation [or being allowed to reinstate his said policy on account of his physical condition], *and at the time of such death or permanent total disability had or has sufficient uncollected compensation to pay all unpaid premiums*, then and in that event said policy shall not be considered as lapsed, and the *United States* Veterans' Bureau is hereby authorized and directed to pay to the *said soldier or his* beneficiaries [of said soldier] under said policy the amount of said insurance, less the premiums and interest thereon at 5 per centum per annum compounded annually in installments as provided by law: * * *. [Italics represent words added by the amendatory Act. Words in the prior Act, omitted by amendment, are enclosed in brackets.]

Bulletin No. 1 (Regulations and Procedure, U. S. Veterans' Bureau (1930), Part II, pp. 1233–1235) was promulgated by the Director of the Bureau of

War Risk Insurance, Treasury Department, on October 15, 1917, and provides, in part, as follows:

I, William C. DeLanoy, Director of the Bureau of War Risk Insurance in the Treasury Department, pursuant to the provisions of section 402 of an act "to amend 'An act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department,' approved September 2, 1914, and for other purposes," approved October 6, 1917, hereby, on this 15th day of October, 1917, by direction of the Secretary of the Treasury, determine upon and publish these full and exact terms and conditions of the contract of insurance to be made under and by virtue of the act:

1. Insurance will be issued for any of the following aggregate amounts upon any one life:

* * * * *

which installments will be payable during the total and permanent disability of the insured, or if death occur without such disability, for 240 months, or if death occur following such disability, for a sufficient number of months to make 240 in all including months of disability already paid for, in both cases except as otherwise provided.

2. The insurance is issued at monthly rates for the age (nearest birthday) of the insured when the insurance goes into effect, increasing annually upon the anniversary of the policy to the rate for an age one year higher, as per the following table of rates:

* * * * *

The insurance may be continued at these increasing term rates during the war and for not longer than five years after the termination of the war, and may be continued thereafter without medical examination if the

policy be converted into a form selected before the expiration of such five years by the insured from the forms of insurance which will be provided by the bureau, provided that premiums are paid therefor at net rates computed by the bureau according to the American experience table of mortality and interest at 3½ per cent per annum.

The War Risk Insurance Act was repealed by Sections 600 and 601 of the World War Veterans' Act, June 7, 1924, c. 320, 43 Stat. 607, 629–630. Section 601 provided:

> That the following Acts are hereby repealed. The sections of this codification herein applicable thereto shall be in force in lieu thereof, subject to the limitations contained in this title.
>
> (1) The War Risk Insurance Act as amended.
>
> • • • • •

Section 602 provided:

> The repeal of the several Acts as provided in sections 600 and 601 hereof shall not affect any act done or any right or liability accrued, or any suit commenced before the said repeal, but all such rights and liabilities under said Acts shall continue and may be enforced in the same manner as if said repeal had not been made: • • •

Provisions limiting yearly renewable term insurance as to time, and provisions for revival of lapsed insurance, were reenacted in Sections 301 and 305, respectively, of the World War Veterans' Act, 1924, c. 320, 43 Stat. 607, 624, 626, which provided (words in italics were added by the later Act to the provisions as formerly enacted in the

corresponding sections of the War Risk Insurance Act. (Words in the former Act omitted in the later act, are enclosed in brackets):

SEC. 301. [During the period of the war and thereafter until converted, the insurance shall be term insurance for successive terms of one year each.] Not later than [five years after the date of the termination of the war as declared by proclamation of the President of the United States the] *July 2, 1926, all* term insurance *held by persons who were in the military service after April 6, 1917,* shall be converted, without medical examination, into such form or forms of insurance as may be prescribed by regulations and as the insured may request. Regulations shall provide for the right to convert into ordinary life, twenty-payment life, endowment maturing at age sixty-two, and into other usual forms of insurance, and shall prescribe the time and method of payment of the premiums thereon, but payments of premiums in advance shall not be required for periods of more than one month each and may be deducted from the pay or deposit of the insured of be otherwise made at his election.

All term insurance shall cease on July 2, 1926, except when death or total permanent disability shall have occurred before July 2, 1926.

In case where an insured whose yearly renewable term insurance has matured by reason of total permanent disability is found and declared to be no longer permanently and totally disabled, and where the insured is required under regulations to renew payment of premiums on said term insurance, and where this contingency is extended beyond the [five-year] period during which said yearly renewable term insurance other-

wise must be converted, there shall be given such insured an additional period of two years from the date on which he is required to renew payment of premiums in which to convert said term insurance as hereinbefore provided.

[That] The bureau [of War Risk Insurance] may make provision in the contract for converted insurance for optional settlements, to be selected by the insured, whereby such insurance may be made payable either in one sum or in installments for thirty-six months or more. The bureau may also include in said contract a provision authorizing the beneficiary to elect to receive payment of the insurance in installments for thirty-six months or more, but only if the insured has not exercised the right of election, as hereinbefore provided; and even though the insured may have exercised his right of election, the said contract may authorize the beneficiary to elect to receive such insurance in installments spread over a greater period of time than that selected by the insured.

SEC. 305. [That] Where any [soldier] *person* has heretofore allowed his insurance to lapse while suffering [from wounds or disease suffered or contracted in line of service, and was at the time he allowed his insurance to lapse entitled to compensation on account thereof in a sum equal to or in excess of the amount due from him in premiums on his said insurance, and dies or has died, from said wounds or disease, or becomes or has become permanently and totally disabled by reason thereof, without collecting said compensation, and at the time of such death or permanent total disability had or has suf-

ficient uncollected compensation to pay all unpaid premiums] *from a compensable disability for which compensation was not collected and dies or has died, or becomes or has become permanently and totally disabled and at the time of such death or permanent total disability was or is entitled to compensation remaining uncollected*, then and in that event [said policy] *so much of his insurance as said uncollected compensation, computed in all cases at the rate provided by Section 302 of the War Risk Insurance Act as amended December 24, 1919, would purchase if applied as premiums when due*, shall not be considered as lapsed; and the United States Veterans' Bureau is hereby authorized and directed to pay to [the] said soldier, or his beneficiaries [under said policy] *as the case may be* the amount of said insurance less the *unpaid* premiums and interest thereon at 5 per centum per annum compounded annually in installments as provided by law. [*Provided further*, That where any soldier has heretofore allowed his insurance to lapse, while suffering from wounds or disease contracted in line of service, and has applied for reinstatement thereof in whole or in part, and where at the time of such application he was not totally and permanently disabled, and where he was not allowed to reinstate because of health condition other than total permanent disability, and where said soldier has since died from said wounds or disease or has become permanently and totally disabled by reason thereof, then and in that event the United States Veterans' Bureau is hereby authorized and directed to pay to said soldier or his beneficiaries the amount of insurance attempted to be reinstated less the premiums and interest thereon at 5 per centum per annum compounded annually in installments as provided by law.]

The Act of March 4, 1925, c. 553, Sec. 13, 43 Stat. 1302, 1309, reenacted Section 301 in its entirety and added two paragraphs authorizing the insertion of certain provisions in the insurance contract, prescribing the basis for calculating benefits, authorizing change of beneficiaries, and providing for the disposition of the insurance proceeds in certain contingencies. The section was made effective as of June 7, 1924.

The Act of June 2, 1926, c. 449, 44 Stat. 686, reenacted Section 301 as previously amended with further amendments which designated as "yearly renewable" the original term insurance which in previous acts had been referred to merely as "term insurance";[1] extended the time limitation upon the continuance of such insurance to July 2, 1927, and provided for further extensions in cases where conversion of such insurance was impracticable or impossible because of the mental condition or disappearance of the insured; added "five year level premium term" to the forms into which the original yearly renewable term insurance might be converted; provided for reconversion of policies to a higher premium rate, and permitted the temporary

[1] This new designation was no doubt made because the original term insurance continued for terms of only one year at a time, being automatically renewed at the end of each year at the higher premium rate for the attained age of the insured (see Treasury Bulletin No. 1, October 15, 1917, containing terms of the original contract, Appendix, *supra*, pp. 45, 46); and also because this designation provided a means of distinguishing this type of term insurance from the converted term insurance known as "five year level premium term", which was added by this Act to the forms into which the original insurance might be converted.

accumulation of monthly benefit payments by the Director in certain cases. The section was made effective as of June 7, 1924.

The Act of July 2, 1926, c. 723, Sec. 16, 44 Stat. 790, 799, reenacted Section 305 with amendments providing cancellation and reduction (in addition to lapse) of insurance as an alternative condition to its revival, and limiting the class of beneficiaries of insurance to be revived after the passage of the Act.

The Act of May 29, 1928, c. 875, Sections 14 and 17, 45 Stat. 964, 968, 971, amended Sections 301 and 305. It reenacted Section 301 with amendments relating to reconversion of insurance into other forms of converted insurance and altering the terms of the prior provision for distribution of the proceeds of converted insurance where no beneficiary has been designated. The section, as amended, was made effective as of June 7, 1924. Section 305 was amended by adding a provision that compensation uncollectible under certain provisions of the law shall be considered as uncollected for the purposes of Section 305.

The Act of July 3, 1930, c. 849, Sec. 22, 46 Stat. 991, 1001, reenacted with amendments two paragraphs of Section 301, making the provisions allowing additional time for conversion of yearly renewable term insurance applicable to reinstatement, and authorizing the insertion in the converted policy of a provision for refund of premiums.

The Act of June 24, 1932, c. 276, 47 Stat. 334, amended the first paragraph in Section 301 (containing the provision requiring conversion of

yearly renewable term insurance by July 2, 1927), by adding a provision permitting the renewal of five-year level premium term policies of converted insurance.

The Act of June 1, 1937, c. 285, 50 Stat. 241, reenacted the same paragraph of the section in its entirety with amendments making further provision for renewing five-year level premium term policies.

Section 304 of the World War Veterans' Act, 1924, as amended, as contained in U. S. C., Title 38, Sec. 515, provides:

> In the event that all provisions of the rules and regulations other than the requirements as to the physical condition of the applicant for insurance have been complied with an application for reinstatement, in whole or in part, of lapsed or canceled yearly renewable term insurance or United States Government life insurance (converted insurance) made after June 7, 1924, may be approved if made within one year after July 2, 1926, or within two years after the date of lapse or cancellation: *Provided*, That the applicant's disability is the result of an injury or disease, or of an aggravation thereof, suffered or contracted in the active military or naval service during the World War: *Provided further*, That the applicant during his lifetime submits proof satisfactory to the Administrator of Veterans' Affairs showing that he is not totally and permanently disabled. As a condition, however, to the acceptance of an application for the reinstatement of lapsed or canceled yearly renewable term insurance, where the requirements as to the physical condition of the applicant have not been complied with, or, for the re-

reinstatement of the United States Government life insurance (converted insurance), the applicant shall be required to pay all the back monthly premiums which would have become payable if such insurance had not lapsed, together with interest at the rate of 5 per centum per annum, compounded annually, on each premium from the date said premium is due by the terms of the policy: *Provided further*, That where, within one year after July 2, 1926, all of the requirements for reinstatement of yearly renewable term insurance under this section are complied with, except the payment of unpaid premiums with interest, and proof satisfactory to the Administrator of Veterans' Affairs is furnished showing the applicant is unable to pay such premiums with interest or some part thereof, the application may be approved, and the amount of unpaid premiums with interest as provided in this section shall be placed as an interest-bearing indebtedness against the insurance, such indebtedness to bear interest at the rate of 5 per centum per annum, compounded annually, to be deducted in any settlement thereunder: *And provided further*, That except as provided in section 512 [Section 301 of the World War Veterans' Act, 1924] of this title, no yearly renewable term insurance shall be reinstated after July 2, 1927.

Copies of the following letter from the Director of the United States Veterans' Bureau to the Chairman of the House Committee on World War Veterans' Legislation were attached to the Committee Report (H. Rep. No. 515, 69th Cong., 1st Sess.), made on March 11, 1926, in connection with a bill (H. R. 10240) to amend Sections 301 and 305 of the World War Veterans' Act, 1924, and to the

Report of the same Committee (H. Rep. No. 1217, 69th Cong., 1st Sess.), made on May 14, 1926, in connection with a substitute bill (H. R. 12175):

UNITED STATES VETERANS' BUREAU
Washington, March 10, 1926.

HON. ROYAL C. JOHNSON,
Chairman House Committee on
World War Veterans' Legislation,
House of Representatives,
Washington, D. C.

MY DEAR MR. JOHNSON:

* * * * * *

Section 15 amends section 301 to provide for the continuation of term insurance for a period of three years. The chief effect of such a continuation would be the increased cost due to the continued application of section 305, *assuming that section 305 under the present law is not effective subsequent to July 2, 1926.* Based upon current experience, the amount of term insurance which might be brought in under section 305 by the continuation of the term-insurance provisions for another three years is estimated at $105,039,900. Payment on this insurance would continue over approximately 20 years, accumulating each year as follows: First year, $5,252,000; Second year, $10,504,000; Third year, $15,756,000. [Italics supplied.]

Section 18 amends section 305 by limiting the class of beneficiaries. The above estimate of costs due to the continuation of term insurance through the amendment of section 301 can, therefore, be discounted by 45 per cent, with the resultant value of insurance which might be brought in totaling $57,771,945. Through this limitation there results, therefore, a material saving each year as fol-

lows: First year, $2,362,000; Second year, $4,724,000; Third year, $7,086,000. Net cost of extension of term insurance:

First year, $2,890,000; Second year, $5,780,000; Third year, $8,670,000.

* * * * *

FRANK T. HINES, *Director.*

When H. R. 12175, *supra*, was before the Senate Committee on Finance, the Director of the Veterans' Bureau testified before that Committee on May 24, 1926, as follows:

Section 17 amends Section 304 and provides for the extension of term insurance for one year. The chief effect of the continuation of term insurance will be the cost of the cases revived under Section 305, *assuming that Section 305 under the present law is not effective for cases dying or becoming permanent total subsequent to July 2, 1926, and further assuming that the application of Section 305 will not be effective under this provision for cases dying or becoming permanent total subsequent to July 2, 1927.* Based upon current experience the term insurance which might be brought in under Section 305 by continuation of term insurance for one year will cost annually, at the rate of $57.50 per month for $10,000, approximately $1,839,540; however, Section 18 amends Section 305 by limiting the class of beneficiaries for insurance revived under Section 305 to the widow, child, or parent. It is, therefore, believed that the above estimate of cost due to the continuation of term insurance can be discounted by 45 percent, with the resultant annual saving of approximately $827,780. The net cost of continuation of term insurance for a period of one

year would, therefore, be approximately $1,011,760. [Italics supplied.]

(Hearings before the Senate Committee on Finance on H. R. 12175, May 24, 1926, p. 13.)

Neither H. R. 10240 nor H. R. 12175 were enacted into law. The former, after a favorable Committee Report (H. Rep. 515, *supra*) was tabled in the House (Cong. Rec., Vol. 67, p. 9686). The latter, although it passed the House (Cong. Rec. Vol. 67, p. 9563) and reached the Senate Finance Committee (Cong. Rec. Vol. 67, p. 9610), which held hearings on it, was superseded by S. 3997, which became the Act of June 2, 1926 (Cong. Rec. Vol. 67, p. 9970).

The following certificate of the Administrator of Veterans' Affairs, dated September 24, 1937, and a copy of the opinion of the General Counsel of the Veterans' Bureau, approved by the Director of the Bureau on February 27, 1928, were filed with the Clerk of the Circuit Court of Appeals for the Ninth Circuit in the instant case:

UNITED STATES OF AMERICA,
VETERANS' ADMINISTRATION,
September 24, 1937.

I hereby certify that the annexed photostats are those of an opinion rendered by the former General Counsel of the Veterans' Bureau on February 23, 1928, addressed to me as Director of said Bureau, to constitute a precedent for the administrative construction of Section 305 of the World War Veterans' Act, 1924, as amended. I further certify that said opinion was approved by me as Director on February 27, 1928, and was followed administratively by the Veterans'

Bureau, has not been modified, and is still applied as the administrative practice of the Veterans' Administration.

In witness whereof, I have hereunto set my hand, and caused the seal of the Veterans' Administration to be affixed on the day and year first above written.

[SEAL.] (Signed) FRANK T. HINES,
Administrator of Veterans' Affairs.

UNITED STATES VETERANS BUREAU,
Date: February 23, 1928.

LL-34

Memorandum from: The General Counsel.
To: The Director.
Subject: Cherniavsky, Morris, XC-400,962.

The Adjudication Service has presented this case for an opinion and as the establishment of a precedent is involved the opinion is referred to you for your approval.

The Adjudication Service has prepared the following summary of facts:

"This man executed an application for insurance while in service, but allowed this insurance to lapse for non-payment of the premium due September 1, 1919. The man had been discharged on August 22, 1919, and, following his discharge, he executed an application for compensation, on which application he has been rated as being disabled in various degrees until the date of his death on July 20, 1927. At the time of the lapse of the insurance his disability was of a compensable degree.

"Following his death, it was determined that while he had been rated less than 10 per cent disabled from August 9, 1924, as an actual fact he was temporarily partially 62 per cent disabled from that date to November 3, 1924, less than 10 per cent from that

date to July 1, 1926, and entitled to the statutory award for arrested tuberculosis in the amount of $50 monthly from July 2, 1926, to July 20, 1927.

"You will note that this claimant was not permanently and totally disabled at any time prior to his death, which occurred on July 20, 1927, and therefore the question is herewith presented to your Service whether a claimant who dies subsequent to July 2, 1927, and who was not permanently and totally disabled at any time prior thereto, comes within the provisions of Section 305 of the World War Veterans' Act as amended, if there is compensation due and unpaid for a period prior to the date of his death."

The question is whether Section 305 of the World War Veterans' Act, as amended, has application to term insurance where there has been neither permanent and total disability nor death at any time prior to July 2, 1927, the ending date for term insurance.

Section 304, World War Veterans' Act (last proviso), is to the effect that no yearly renewable term insurance shall be reinstated after July 2, 1927. The second paragraph of Section 301, World War Veterans' Act, as amended, provides in substance that all yearly renewable term insurance shall cease on July 2, 1927, except where death or total permanent disability shall have occurred before that date with the proviso that the Director may extend the time for continuing yearly renewable term insurance where on July 2, 1927, conversion is impracticable or impossible by reason of mental condition or disappearance of the insured.

Section 305 of the World War Veterans' Act, as amended, of course, has application

both to term and converted insurance and is to the effect that where any person has heretofore allowed his insurance to lapse or has canceled or reduced any or all of the insurance, and where the other requirements of Section 305 have been met such insurance shall not be regarded as having lapsed.

It may be noted generally that government insurance, both term and converted, may be discontinued (a) either by the government or (b) by the insured. The insured may end his insurance in whole or in part by some affirmative act such as cancellation or reduction or by failure to act, as where the insurance lapses for failure to pay premiums. The provisions of Section 305, World War Veterans' Act and for that matter the provisions of Section 408 of the War Risk Insurance Act deal with cases where the insured has discontinued his insurance, whereas the last proviso of Section 304, World War Veterans' Act, and the second paragraph of Section 301, World War Veterans' Act, deal with the discontinuance of the insurance through some act of the government.

In the present case the term insurance lapsed prior to July 2, 1926, through failure of the insured to pay premiums, and at the time of the lapse of the insurance his disability was of a compensable degree. Further, there was uncollected compensation at the date of lapse. Therefore, it would appear normally that the first proviso of Section 305 has been met. The second requirement of Section 305 is that there should have been uncollected compensation due at the maturity of the insurance, either through permanent and total disability or through death. In the present case the death was after July 2, 1927, and there was

no permanent and total disability prior to July 2, 1927. Therefore, assuming that there was uncollected compensation at the date of lapse so that the first requirement of Section 305 has been met, if an attempt be made to apply that Section in the present case the insurance would be prevented from lapsing up to July 2, 1927, at which time the term insurance by act of the Government was ended. Clearly in this case the term insurance did not mature before July 2, 1927, so that it cannot be said that the case would be covered by this language in paragraph 2 of Section 301 "except where death or permanent total disability shall have occurred before July 2, 1927." Neither, on the assumption that Section 305 might be applied to carry the term insurance to July 2, 1927, can it be said that there are grounds for continuing the term insurance after the dead line because there is nothing to show that conversion was impracticable or impossible because of the mental condition or disappearance of the insured.

Having in mind the fact that from the very beginning of war risk legislation it has been clearly understood that the yearly renewable term insurance was temporary in its nature and subject to ultimate termination by the government; and having in mind that from a relatively early date Congress has seen fit to declare that term insurance could not be carried beyond a specified date, which date has been extended from time to time; and having in mind that the final extension expired under the present act, July 2, 1927, it is the opinion of this Service that Section 305 cannot be applied to prevent the lapse of term insurance where there was neither

death nor total permanent disability before July 2, 1927.

(Signed) WILLIAM WOLFF SMITH.

Director's Office, Feb. 27, 1928.
Approved: F. T. H., Director.

In a letter dated June 9, 1938, to the Solicitor General, the Administrator of Veterans' Affairs stated in part:

> It is noted from the opinion of the Court in the McClure case that the Government relied on the Administrative practice and brought to the attention of the Court the opinion of a former General Counsel in the case of Morris Cherniavsky, XC-400,962, February 22, 1928 (50 C. C. 413). The Court evidently thought that this was an isolated case and apparently was not aware of the fact that it was a precedent forming opinion on which an Administrative policy has rested of more than ten years' duration. * * *[1]

In a letter dated November 14, 1938, to the Solicitor General from the Administrator of Veterans' Affairs, it is said:

> This is in reference to your inquiry relative to the matter of the procedure of the Veterans Administration after the discontinuance of the payments of insurance benefits based upon a finding of recovered ability to follow continuously some substantially gainful occupation, in cases where the insurance benefits have been awarded under the provisions of Section 305 of the World War Veterans Act, as amended.

---

[1] The entire letter (with the exception of the part quoting the opinion of the General Counsel of the Veterans Bureau) appears in the Appendix to the Petition for a Writ of Certiorari, pp. 26–30.

In accordance with the provisions of the third paragraph of Section 301, World War Veterans Act, as amended, Section 3141, Veterans Regulations and Procedure provides that: "When an insured under yearly renewable term insurance is receiving insurance benefits on account of a total and permanent disability award and such award is terminated, the insured may, if he so desires, renew the payment of premiums on the reduced amount of term insurance (the commuted value of the remaining unpaid installments)."

The practice of the Veterans' Administration in respect of Section 305 cases has always been in accordance with the procedure stated above. A similar provision is contained in all policies of United States Government life insurance, the provision in these policies being to the effect that upon failure of the insured to furnish proof of continued permanent and total disability, all payments of monthly installments on account of such total permanent disability shall cease and all premiums thereafter falling due shall be payable in conformity with the policy.

As an example of the action taken in cases where payments have been awarded under the provisions of Section 305 of the World War Veterans Act, as amended, and such payments have been discontinued on account of a finding of recovered ability to follow continuously some substantially gainful occupation, there is cited the case of Joseph T. Wargo, C–1,001,240, in which the facts are as follows:

Mr. Wargo, while in the military service, was granted yearly renewable term insurance in the amount of $10,000. He was hon-

orably discharged January 27, 1919 and the premiums on this insurance were paid to include the month of January 1919. Effective February 1, 1919, he reduced his insurance to $5,000 and paid premiums on this amount to include the month of August 1919. This $5,000 insurance lapsed for nonpayment of the premium due September 1, 1919.

Mr. Wargo filed an application for benefits under his yearly renewable term insurance and on February 18, 1932, the Insurance Claims Council rendered a decision to the effect that for insurance purposes he had been permanently and totally disabled from May 2, 1923. Upon review of the compensation records, it was found that the veteran had been entitled to compensation remaining uncollected at the date of the lapse of his insurance (i. e. September 1, 1919) and that on the commencing date of his permanent and total disability, May 2, 1923, he was entitled to uncollected compensation in the sum of $113.89, which was sufficient to cover the premiums on $3,845.00 yearly renewable term insurance from September 1919 to May 1923, both months inclusive. Interest on these premiums at 5 per cent compounded annually to May 2, 1923 amounted to $10.80, making a total indebtednes under the provisions of Section 305 of the World War Veterans Act in the amount of $123.69. After the deduction of these premiums and interest, there remained net insurance in the amount of $3,721.31, which was awarded to the veteran in monthly installments of $21.40 each commencing May 2, 1923.

A regular review of this case was made by the Insurance Claims Council on April 14, 1933, when a decision was rendered finding that the evidence showed that the veteran

had regained the ability to follow continuously some substantially gainful occupation and was therefore no longer permanently and totally disabled. Pursuant to this decision, the payments of insurance benefits were discontinued with the installment which was mailed to Mr. Wargo on April 2, 1938.

Under the award of insurance benefits in this case, the veteran had received 180 installments of the insurance, and it was determined that he was entitled to continue the present cash value of the 60 remaining installments in force by the payment of premiums. The value of these remaining installments was $1,220.00, on which the veteran has paid the premiums to include the month of December 1938.

Very truly yours,

(s/s) FRANK T. HINES,
Frank T. Hines,
Administrator.

Incl.

U. S. GOVERNMENT PRINTING OFFICE: 1938

FILE COPY

Office - Supreme Court, U. S.
FILED
DEC 8 1938
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 154

UNITED STATES OF AMERICA,
Petitioner,

vs.

KATHLEEN McCLURE, AS ADMINISTRATRIX OF THE ESTATE OF JOHN F. McCLURE, DECEASED, AND INDIVIDUALLY,
Respondent.

BRIEF OF RESPONDENT.

GRAHAM K. BETTS,
Seattle, Washington;
ALAN PAINE,
Spokane, Washington;
Attorneys for Appellee.

INDEX.

Subject Index.

	Page
Opinion of the court below	1
Summary of argument	1
1. The court below did not hold that the benefits of Section 305 was a gratuity and hence the trial court did have jurisdiction	2
2. Section 305 provides for the revival of insurance when the conditions therein stated have been met, notwithstanding that such conditions may have occurred after July 2, 1927, which date is fixed generally under Section 301 for the termination of term insurance	4

Citations.

Cases:

Case of Joseph T. Wargo (Pet. Brief 62-65)	11
Case of Morris Cherniovsky (Pet. Brief 58-62)	11
Ex Parte, U. S., Petitioner, 226 U. S. 420-424	10
Petri v. *Creelman Lumber Co.*, 199 U. S. 487, 497	10
Rogers v. *United States*, 185 U. S. 83	10
Townsend v. *Little*, 109 U. S. 504, 512	10
U. S. v. *Arzner*, 187 U. S. 470	12
U. S. v. *Atchison*, 220 U. S. 37	9
U. S. v. *Ellison*, 74 F. (2d) 864	4
U. S. v. *Hendrickson*, 53 F. (2d) 797	4
U. S. v. *Jackson*, 502 U. S. 628	12
U. S. v. *Knott*, 69 F. (2d) 907	4
U. S. v. *Mathews*, 173 U. S. 381	10
U. S. v. *Patryas*, 303 U. S. 341	12
U. S. v. *Sellers*, 75 F. (2d) 623	4
U. S. v. *Vance*, 48 F. (2d) 472	4
U. S. v. *Weaver*, 86 F. (2d) 372	4
White v. *U. S.*, 270 U. S. 175	12

Statutes:

	Page
Act of June 7, 1924, c. 320, 43 Stat. 607	8
Act of March 4, 1923, c. 291, Sec. 7, 42 Stat. 1521, 1525-6	7
Act of August 9, 1921, c. 57, 42 Stat. 147, 156	7
Section 301, W. W. V. A., 44 Stat. 686, 38 U. S. C., Sec. 512	5
Section 304	8, 9
Section 305, W. W. V. A., 44 Stat. 799, 38 U. S. C. 512	6

Miscellaneous:

H. R. 1217, 69th Congress, 1st Session	11
H. R. 12175, May 24, 1926, page 13	11
H. R. 6611, 67th Congress	3

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 154

UNITED STATES OF AMERICA,

Petitioner,

vs.

KATHLEEN McCLURE, AS ADMINISTRATRIX OF THE ESTATE OF JOHN F. McCLURE, DECEASED, AND INDIVIDUALLY,

Respondent.

BRIEF OF RESPONDENT.

Opinion of the Court Below.

The District Court rendered no opinion. The opinion of the Circuit Court of Appeals (R. 49-59) is reported in 95 F. (2d) 744.

Summary of Argument.

1:

The Circuit Court did not hold that the insurance conferred by Section 305 was a gratuity but merely that the revival thereof was a gratuity and that therefore the trial court did have jurisdiction.

2.

A. The legislative division of Sections 301 and 305 indicates a clear intent that 305 should constitute an exception to the limitation contained in Section 301.

B. The Circuit Court of Appeals did not fail to notice any administrative construction of Section 305 but merely held that no administrative practice was proved and none is shown in the Government's brief in this Court.

C. The statutes in regard to war risk insurance have been and should be liberally construed in favor of the insured.

It is difficult to enlarge upon the opinion of the Circuit Court of Appeals (R. 49-59) and the matters contained in this brief are largely in furtherance of the position taken by the Circuit Court of Appeals and not noticed by it in its opinion and it is earnestly urged that the opinion of the Circuit Court of Appeals fully covers the matter in question in a lucid and logical manner and should require little, if any, argument in further support thereof.

ARGUMENT.

1.

The court below did not hold that the benefits of Section 305 was a gratuity and hence the trial court did have jurisdiction.

The Government contends that the Circuit Court of Appeals in its opinion determined that the benefits provided by Section 305 are a gratuity and as such cannot be made the basis of a suit under Section 19 of the Act, which confers jurisdiction upon the District courts to hear causes "under a contract of insurance." It is not believed that the opinion so holds but only that the payment of insurance benefits are determined in an amount by the application of the gratuitous rules provided by Section 305 In other words, there must

first have existed an insurance contract, which has lapsed for nonpayment of premiums and there must have existed at the time of the lapse a compensable disability of the insured for which compensation was not paid and there must further exist an amount of uncollected compensation at the time of the claimed maturity of the policy by reason of death or total permanent disability; the Government will then resort to the gratuitous application of such compensation to the payment of the premiums as the same would have become due and the amount of insurance so revived is determined by the amount of compensation which was due and unpaid.

That the insurance so revived is not a gratuity is clear from the fact that the unpaid premiums are in fact paid by deducting from the face of the insurance the amount of such unpaid premiums together with interest thereon at the rate of 5%. The resulting payment to the insured or his beneficiaries is reduced accordingly.[1]

---

[1] That insurance revived was not intended by Congress to be a gratuity, is apparent from the Senate Report on H. R. 6611, 67th Congress, which Bill originated Section 408 of the Act of August 29, 1921, the original House Bill containing no provision for the payment of interest. The Senate report on this Section (231, p. 12) states as follows:

"1. Government life insurance policies (converted insurance) provided for collection of interest in all cases of reinstatement at the rate of 5 per cent per annum, and if this bill should become a law as it now stands it would immediately change this provision in the policy in all cases that are now lapsed, where the disability is of service origin. All reinstatements that have been made have been on the basis of interest at 5 per cent per annum.

2. The Government life insurance fund is now earning and has averaged since it begun to invest its fund an interest rate of better than 5 per cent, and to allow a certain class to reinstate on a rate of interest less than others have been charged of the same class is manifestly unfair to those who have paid 5 per cent.

The second proviso of the House bill, which relates specifically to persons entitled to compensation under article 3 of the war risk insurance act, declares that insurance shall not lapse if such compensation has not been collected or if no claim has been made therefor, if at the time of lapse the insured was entitled to compensation in a sum equal to or in excess of the amount due from him in premiums,

That the trial court had jurisdiction was conceded in the Circuit Court (R. 59) and has been uniformly so determined by the number of cases wherein this Court has denied certiorari and by decisions in the various circuit courts of appeal:

U. S. v. *Ellison*, 74 F. (2d) 864 (C. C. A. 4), certiorari denied 295 U. S. 750;
U. S. v. *Sellers*, 75 F. (2d) 623 (C. C. A. 5), certiorari denied 295 U. S. 763;
U. S. v. *Knott*, 69 F. (2d) 907 (C. C. A. 6);
U. S. v. *Hendrickson*, 53 F. (2d) 797 (C. C. A. 10);
U. S. v. *Vance*, 48 F. (2d) 472 (C. C. A. 8);
U. S. v. *Weaver*, 86 F. (2d) 372 (C. C. A. 4),

and in view of the long line of decisions wherein the courts have uniformly held that jurisdiction obtained to hear and determine cases invoking the benefit of Section 305 we do not believe that the Government's contention to the contrary can be seriously urged.

2.

Section 305 provides for the revival of insurance when the conditions therein stated have been met, notwithstanding that such conditions may have occurred after July 2, 1927, which date is fixed generally under Section 301 for the termination of term insurance.

A. The only question of any merit before this Court is that concerning the applicability of Sections 301 and 305 of

---

and directs the bureau to pay the insurance to the beneficiaries. There is no provision in the House bill for the payment of premiums due on such insurance. Your committee believes that as under this provision the insurance is not to lapse, but to be regarded as remaining in force, the section should be amended to require the deduction of the premiums due and interest thereon at 5 per cent per annum compounded annually before making payment to the beneficiary under the policy."

the World War Veterans Act, as amended, to the facts presented in this case, the full statement of which is set forth in the Government's brief. The only material facts being:

First, that the insured, a World War veteran permitted his insurance to lapse for nonpayment of premiums due in February, 1919 (R. 29).

Second, that he became permanently and totally disabled December 1, 1929 (R. 29).

Third, that at the date of lapsation of his insurance he was suffering from a compensable disability for which there was due and uncollected compensation and on the date of his total permanent disability there remained due and uncollected compensation (R. 29).

The pertinent provisions of Section 301 of the World War Veterans Act of 1924, as amended July 2, 1926, 44 Statutes 686, 38 U. S. C. Section 512, are as follows:

"• • •

"All yearly renewable term insurance shall cease on July 2, 1927, except when death or total permanent disability shall have occurred before July 2, 1927: *Provided, however,* That the Director may by regulation extend the time for the continuing of yearly renewable term insurance and the conversion thereof in any case where on July 2, 1927, conversion of such yearly renewable term insurance is impracticable or impossible due to the mental condition or disappearance of the insured.

"In case where an insured whose yearly renewable term insurance has matured by reason of total permanent disability is found and declared to be no longer permanently and totally disabled, and where the insured is required under regulations to renew payment of premiums on said term insurance, and where this contingency is extended beyond the period during which said yearly renewable term insurance otherwise must

be converted, there shall be given such insured an additional period of two years from the date on which he is required to renew payment of premiums in which to reinstate or convert said term insurance as hereinbefore provided: *Provided*, That where the time for conversion has been extended under the second paragraph of this section because of the mental condition or disappearance of the insured, there shall be allowed to the insured an additional period of two years from the date on which he recovers from his mental disability or reappears in which to convert. * * *"

Section 305 of the World War Veterans Act of 1924 as amended, 44 Statutes 799, 38 U. S. C. 516:

"Availability of compensation to revive insurance. Where any person has, prior to June 7, 1924, allowed his insurance to lapse, or has canceled or reduced all or any part of such insurance, while suffering from a compensable disability for which compensation was not collected and dies or has died, or becomes or has become permanently and totally disabled and at the time of such death or permanent total disability was or is entitled to compensation remaining uncollected, then and in that event so much of his insurance as said uncollected compensation, computed in all cases at the rate provided by section 302 of the War Risk Insurance Act as amended December 24, 1919, chapter 16, Forty-first Statutes, page 371, would purchase it applied as premiums when due, shall not be considered as lapsed, canceled or reduced; and the Veterans' Administration is hereby authorized and directed to pay to said soldier, or his beneficiaries, as the case may be, the amount of said insurance less the unpaid premiums and interest thereon at 5 per centum per annum compounded annually in installments as provided by law: *Provided*, That insurance revived after June 7, 1924, under this section and section 516b of this title by reason of permanent and total disability or by death of the insured, shall be paid only to the insured, his widow, child or children, dependent mother or father, and in the order

named unless otherwise designated by the insured during his lifetime or by last will and testament: [2] *Provided further*, That compensation which is uncollectible by reason of the provisions of section 310 of the War Risk Insurance Act, as amended, or section 499 of this title, shall be considered as uncollected compensation for the purposes of this section." [3]

Prior to the Act of August 9, 1921, c. 57, 42 Statutes 147, 156, there was no provision in the War Risk Insurance Act comparable to Section 305. However, by Section 27 of that Act a new section denominated Section 408, was added to the War Risk Insurance Act, which Section provided *first* for *reinstatement* of insurance where the applicant was unable to meet the requirements as to physical condition and *second* provided for the *revival* of insurance, which had lapsed where the insured had died and where at the time of lapse and at the time of death he was entitled to uncollected compensation. That entire section contained no limitation on the applicability of its provisions except that as to the provision for revival the insured must have died.

By the Act of March 4, 1923, c. 291, Section 7, 42 Statutes 1521, 1525-6, the entire section was amended and it was provided that the revival of insurance under the stated conditions would be applicable to one who "*dies or has died or becomes or has become totally and permanently disabled,*" thus projecting into the future and making prospective the benefits of that section to those who "at the time of such death or permanent and total disability had or has sufficient uncollected compensation to pay *all* unpaid premiums." Section 404 (Section 301) was not amended at that time.

---

[2] Proviso added by Act of July 2, 1926, 44 Stat. 799.

[3] Proviso added by Act of May 29, 1928, 45 Stat. 971.

The amendment of May 29, 1928, indicates a realization that Section 305 was not limited in time to July 2, 1927.

By the Act of June 7, 1924, c. 320, 43 Statutes 607, the entire War Risk Insurance Act was rewritten into what is now known as the World War Veterans Act and Section 404 therefore existing became Section 301 in its present form so far as material to the question here involved. By that Act Section 408 was separated into Section 304[4] and 305. Section 304 incorporating that part of Section 408 relating to the reinstatement of insurance where the applicant was unable to meet the physical requirements. There was added thereto the express provision "that no term insurance shall be reinstated after July 2, 1926," thus making Section 304 conform to the stated limitation of term insurance contained in Section 301.

---

[4] Section 304:

"In the event that all provisions of the rules and regulations other than the requirements as to the physical condition of the applicant for insurance have been complied with, and application for reinstatement, in whole or in part, of lapsed or canceled yearly renewable term insurance or United States Government life insurance (converted insurance) hereafter made may be approved if made within one year after the passage of this Act or within two years after the date of lapse or cancellation: *Provided*, That the applicant's disability (if any) is the result of an injury or disease, or of an aggravation thereof, suffered or contracted in the active military or naval service during the World War: *Provided further*, That the applicant during his lifetime submits proof satisfactory to the director showing the service origin of the disability or aggravation thereof and that the applicant is not totally and permanently disabled. As a condition, however, to the acceptance of an application for the reinstatement of lapsed or canceled yearly renewable term insurance, where the requirements as to the physical condition of the applicant have not been complied with, or, for the reinstatement of the United States Government life insurance (converted insurance) in any case, the applicant shall be required to pay all the back monthly premiums which would have become payable if such insurance had not lapsed, together with interest of the rate of 5 per centum per annum, compounded annually, on each premium from the date said premium is due by the terms of the policy: *Provided further*, That no term insurance shall be reinstated after July 2, 1926." (This date was changed by the 1926 amendment to read July 2, 1927.)

Section 305, *supra*, contained no such limitation on the revival of insurance through the medium of unpaid compensation. It thus is apparent in the original enactment of the World War Veterans Act of 1924, that Congress did not consider that the limitation on term insurance projected itself throughout the entire act and consequently found it necessary to include such limitation expressly in Section 304 and to exclude it from Section 305, indicating a clear congressional intent that term insurance might be revived under the provisions of Section 305 in the situation here presented, notwithstanding Section 301. This accounts for the division of the original Section 408 into the two Sections 304 and 305 with a time limitation made applicable only to Section 304.

In determining the legislative intent in this situation, that is, by the inclusion in Section 304 of the time limitation of term insurance and its exclusion from Section 305 the rule is well stated by this Court in the case of *U. S.* v. *Atchison, T. and S. F. Ry.*, 220 U. S. 37, wherein the court said:

> "the presence of such a provision in one part and its absence from its other is an argument against reading it as implied."

It seems clear that Congress intended that there should be no time limitation on the applicability of Section 305,[5] probably as pointed out by the Government in its brief, page 29, they must have "anticipated that as time went on the number of cases meeting the conditions of 305 would pro-

---

[5] In the hearings before the Senate Committee on H. R. 6611, 67th Congress the Honorable Richard Elliott, who had proposed the amendment which is now 305, stated it as follows (H. R. 6611, part 1, p. 12):

> "It seems to me, gentlemen, that this is a meritorious proposition. *The Government owed these men more money than they owed the Government* and in addition to that, it was money that was earned by their very lifes' blood which they poured out on the altar of their country for their country's benefit."

gressively diminish;" therefore the section itself contains a self-executing time limitation. As also pointed out, both Sections 301 and 304 deal with insurance whereon premiums must be paid. Whereas, Section 305, neither requires nor permits the payment of premiums on insurance.[6]

There is no inconsistency in the two sections of the statute since Section 301 relates to insurance in force or to be reinstated and converted, and provides only that term insurance shall cease on a certain date and may then be converted into other forms of insurance. Whereas, Section 305 provides only for revival of insurance, which lapsed prior to June 7, 1924, and which may thereafter be matured only under the circumstances therein set forth.

It is readily apparent that Section 305 is applicable only to a very limited class and does not and cannot apply to insurance generally. Consequently, there is no conflict between the general terms of 301 and the special terms of Section 305, and the latter is the special act. As said by this Court in *Ex Parte, U. S., Petitioner*, 226 U. S. 420-424:

> "When the issue is thus narrowed solution is readily reached by the application of the elementary rule that a special and particular statutory provision, affording a remedy for particular and specific cases, is not repealed by a general law unless the repeal be expressed or an implication to that end be irresistible. *Petri* v. *Creelman Lumber Co.*, 199 U. S. 487, 497."

See also *Townsend* v. *Little*, 109 U. S. 504, 512; *U. S.* v. *Mathews*, 173 U. S. 381; *Rogers* v. *U. S.*, 185 U. S. 83.

B. The Government contends that Congress enacted Section 305 in view of the administrative interpretation in that the Administrator assumed that 305 would not be applicable after July 2, 1927. It is true as set forth in the

[6] The unpaid premiums together with interest are deducted from the face of the matured policy.

appendix of the Government's brief, that both by letter to the House Committee (H. R. 1217, 69th Congress, First Session), and by testimony before the Senate Committee (hearings before the Senate Committee on Finance, H. R. 12175 May 24, 1926, page 13), that he would so assume, however, as pointed out by the Circuit Court in its opinion (R. 58) these statements were not incorporated in the Committee Report, but were excluded from it, and state no practice whatsoever, hence this assumption of the Administrator cannot be considered in determining the legislative intent.

The Government further contends that the opinion of the Circuit Court is contrary to the settled administrative practice and have set forth in their appendix the memorandum from the General Counsel to the Director, dated February 23, 1928, in the *case of Morris Cherniovsky* (Pet. Brief 58-62). However, this appears to be an isolated case, long subsequent to the enactment of Section 305 and its does not appear that it has been followed in any subsequent case with the possible exception of the *case of Joseph T. Wargo* (Pet. Brief 62-65), which case it appears was determined subsequent to the opinion of the Circuit Court in the present case, apparently for the purpose of now showing a practice which in fact did not exist, and should not be considered by this Court as of course it was impossible to have been considered by the Circuit Court. In any event as pointed out by the Circuit Court in its opinion, "The interpretation of the statute is clear on its face. It follows that the administrative construction is not decisive" (R. 57).

C. Finally it is urged that if any doubt exists as to the applicability of Section 305 to effect a revival of lapsed term insurance after July 2, 1927, where the conditions specified in that section have been met, that such doubt should be resolved in favor of the insured by reason of the beneficent purpose of Congress toward the veterans in its entire legis-

lation, and because of the liberality of construction to be indulged in favor of the insured. *White* v. *U. S.*, 270 U. S. 175; *U. S.* v. *Arsner*, 187 U. S. 470; *U. S.* v. *Patryas*, 303 U. S. 341; *U. S.* v. *Jackson*, 302 U. S. 628.

CONCLUSION.

It is respectfully submitted that the judgment of the Circuit Court of Appeals was correct and should be affirmed.

Respectfully submitted,

GRAHAM K. BEITS,
Seattle, Washington;
ALAN PAINE,
Spokane, Washington;
Attorneys for Respondent.

pp. 1-2.

SUPREME COURT OF THE UNITED STATES.

No. 154.—October Term, 1938.

United States of America, Petitioner,
vs.
Kathleen McClure, as Administratrix of the Estate of John F. McClure, Deceased, and Individually.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[January 3, 1939.]

Mr. Justice Black delivered the opinion of the Court.

We are called upon to determine whether Section 301 or Section 305 of the ~~War Risk Insurance~~ World War Veterans' Act[1] applies to a lapsed policy of War Risk yearly renewable term insurance.

Section 301 authorizes conversion of such policies and provides (with exceptions not applicable here) that "All yearly renewable term insurance shall cease on July 2, 1927, except when death or total permanent disability shall have occurred before July 2, 1927: . . . . . "

Section 305 provides that "Where any person has heretofore allowed his insurance to lapse, . . . while suffering from a compensable disability for which compensation was not collected and dies or has died, or becomes or has become permanently and totally disabled" while "entitled to compensation remaining uncollected . . . his insurance . . . shall not be considered as lapsed;" and the Veterans' Administration shall pay him or his beneficiaries "so much of his insurance as said uncollected compensation . . . would purchase if applied as premiums when due . . . less the unpaid premiums and interest at five per centum compounded annually in installments."

John F. McClure, a World War Veteran, allowed his yearly renewable term insurance to lapse by failing to pay the premium due February, 1919, "while suffering from a compensable disability for which compensation was not collected." December 1, 1929, when he became permanently and totally disabled, there remained uncollected compensation due him sufficient to pay all premiums then due on his lapsed policy. The veteran brought suit on his policy

[1] 38 U. S. C., Sections 512 and 516, 44 Stat. 686, 790.

alleging total and permanent disability and, at his death, respondent—as administratrix and individually—filed an amended complaint seeking recovery under Section 305. The District Court held that the insurance was not revived under Section 305 and entered judgment for the government. The Circuit Court of Appeals reversed,[2] believing Section 301 did not limit Section 305 and that respondent was entitled to judgment on the policy, contrary to the result reached by the Circuit Court of Appeals for the Tenth Circuit.[3]

Since this veteran's lapsed policy was "yearly renewable term insurance" and his permanent disability occurred after July 2, 1927, the question is Did such insurance cease to exist on July 2, 1927 because of the general sweeping provisions of Section 301, or was lapsed yearly renewable term insurance—such as his—saved by the special benefits extended under Section 305? We find the answer in the language of the original War Risk Insurance Act and its amendments.

That original Act of October 6, 1917,[4] provided government insurance without medical examination for persons engaged in war services. Yearly renewable term insurance was granted with provision for conversion into other forms of insurance without medical examination not later than five years after the termination of the war.

August 9, 1921, Congress amended this Act and added Section 408.[5] Section 408 greatly liberalized the rights of veterans, both to reinstate and to revive lapsed "yearly renewable term insurance." First. Veterans suffering from disability contracted in active war service were permitted to reinstate their policies despite such disability. Second. Veterans' insurance which had lapsed while the veterans were suffering from service connected disabilities for which compensation had not been paid—as here, was revived in the amount which such uncollected compensation—at death or date of total disability—would purchase. This first provision of Section 408 was the original predecessor of Section 304; the second provision—relied upon to enforce McClure's policy—became Section 305.

---

[2] 95 Fed. (2d) 744.
[3] Skelton v. United States, 88 Fed. (2d) 590.
[4] 40 Stat. 398, 410.
[5] 42 Stat. 147, 156.

By the Act of March 4, 1923,[6] Congress broadened both beneficial provisions of Section 408 and left it as a single Section. But in 1924, when Congress revised the War Risk Insurance Act,[7] these twin provisions of Section 408 were severed and thereafter appeared as two separate and distinct paragraphs, Sections 304 and 305. Section 304 incorporated that portion of Section 408 which had provided for reinstatement of lapsed term insurance despite physical disability. Section 305 reenacted the second provision of Section 408 which had authorized utilization of uncollected compensation for revival of such lapsed insurance. It is of vital significance that Congress in creating these two new Sections was careful to limit reinstatement of lapsed term insurance by concluding Section 304 with the pointed proviso "That no term insurance shall be reinstated after July 2, 1926." But Congress placed no such limitation on the right of revival under Section 305, on which this suit is brought.

The action of Congress in restricting the benefits only under one of the two Sections must be considered together with Section 301 of the same 1924 Act which provided that "All term insurance shall cease on July 2, 1926, except when death or total permanent disability shall have occurred before July 2, 1926." Congress in this 1924 Act, clearly evidenced its purpose to prohibit reinstatement of yearly renewable term policies under Section 304 after July 2, 1926, in order to make Section 304 conform to Section 301 which authorized conversion of such policies prior to that date. Reinstatement under 304, however, required action by the veteran. He was required to submit application, to comply with statutory and administrative regulations, and to pay back premiums. But action by the veteran was not required to revive a lapsed policy under Section 305. His rights did not depend upon application, proof, compliance with regulations or payment. Because his policy had lapsed while the government owed him money for service connected disability which had become total and permanent, his lapsed policy was automatically revived. To have required action on his part would have been inconsistent with the manifest purpose of Congress to permit revival and continuation of insurance solely because the government had in its possession funds due the veteran and sufficient to pay for his insurance.

---

[6] 42 Stat. 1521, 1525, 1526.
[7] 43 Stat. 607, 625, 626.
[8] 44 Stat. 686.

June, 1926,[9] Section 301 was amended extending the date for conversion of yearly renewable term insurance to July 2, 1927, and the following month the proviso of Section 304 was specifically amended to conform to the June amendment to 301, by prohibiting reinstatement of such insurance after July 2, 1927.[9] Although the right of reinstatement under Section 304 thus was again specifically restricted, Congress in no way indicated any intention to add the same restriction to the right of revival under Section 305 on which the present suit is based. Instead, the benefits under Section 305 were extended by the July amendment so as to permit beneficiaries to apply uncollected bonuses to the lapsed policies of deceased veterans. Congress again gave special attention to Section 305 in 1928[10] and authorized the revival of lapsed policies by utilization of compensation otherwise uncollectible because barred by limitations. Continuing the separate consideration and treatment of Sections 304 and 305, Congress in 1930[11] once more applied the restrictive proviso to Section 304 but not to Section 305.[11]

The deliberate intention of Congress to apply different restrictions to the right of reinstating lapsed policies under Section 304 and that of reviving such policies under Section 305 was also made manifest by other changes in the Act of July 2, 1926.[12] While reinstatement of yearly renewable term insurance under 304, but not revival under 305, was therein prohibited after July 2, 1927, a new proviso was added to 305 under which the "insurance hereafter revived under this section [305] . . . shall be paid only to the insured, his widow, child or children, dependent mother or father, . . ." On the other hand, there is no such limitation as to beneficiaries of policies reinstated under the provisions of Section 304. This studied limitation of the government's liability on policies revived under Section 305, by restriction of beneficiaries, indicates a distinctive legislative consideration and treatment of that Section.

To hold that a lapsed yearly renewable term insurance policy cannot be revived under Section 305 would be to apply to that Section, by construction, the proviso which Congress attached only to 304. Sections 304 and 305 are distinct parts of the statute which contains them. While both Sections emanated from a single prior

[9] 44 Stat. 790, 799.
[10] 45 Stat. 964, 971.
[11] 46 Stat. 991, 1001, Sec. 23.
[12] 44 Stat. 790, 799, 800.

Section, Congress evidently separated them to provide for the individual treatment that has been given reinstatement as distinguished from revival of lapsed policies. A deliberate separation of the two parts of the old Section—applying a restriction to one and not the other—indicates that a change was intended.[13] This is in accord with the presumption that a proviso "refers only to the provision to which it is attached."[14]

In the light of the statutory development of the War Risk Insurance Act, there is no conflict between the general provisions of Section 301 requiring conversion of yearly renewable term insurance by July 2, 1927, and the special benefits granted by Section 305 to that particular group of veterans to whom the government had not paid disability compensation which was justly their due. The benefits of the special provisions of Section 305 are extended to every veteran who has "heretofore allowed his insurance to lapse, . . ." The meaning of the words of the statute is apparent and we need not look beyond the language and statutory development of the War Risk Insurance Act.[15] A lapsed policy, whether yearly renewable term or in converted form, comes within the provisions of Section 305.

Since the veteran in this case was due compensation for service connected disabilities at the time his policy lapsed and at the time he became totally and permanently disabled the amount of his uncollected compensation was sufficient to pay all premiums then due, his insurance was revived under Section 305. The judgment of the Circuit Court of Appeals is therefore affirmed.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

---

[13] Cf. Brewster v. Gage, 280 U. S. 327, 337; United States v. Perryman, 100 U. S. 235, 238.

[14] United States v. Morrow, 266 U. S. 531, 535.

[15] Cf. Standard Co. v. Magrane-Houston Co., 258 U. S. 346, 356.